Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

Volume II

1

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-117

NATIONAL BROILER MARKETING ASSOCIATION,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 21, 1977

CERTIORARI GRANTED OCTOBER 11, 1977

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VOLUME II

In the United States District Court
For the Northern District of Georgia
Atlanta Division

(Title omitted in printing)

AFFIDAVIT OF BOB M. ANTHONY

(Filed May 1, 1975)

State of Mississippi
County of Hinds

I. Bob M. Anthony, after first being duly sworn, on oath, depose and say:

1

I make this affidavit for use by National Broiler Marketing Association (hereinafter sometimes referred to as "NBMA" or "the Association") in support of its Motion for Summary Judgment in this action.

2

I know of my own personal knowledge the facts stated in this affidavit.

3

My residence is 405 Forest Avenue, Jackson, Mississippi 39206, and my business address is 5420 I-55 North, Jackson, Mississippi 39206.

4

I am general manager of NBMA and I have served in that capacity since the Association was chartered in 1970.

5

As general manager, I am responsible for and have charge of the ordinary and usual day-to-day business operations and affairs of NBMA.

6

NBMA was organized and chartered by the State of Georgia on September 15, 1970, as a non-profit cooperative association of persons engaged in the production of agricultural products pursuant to the provisions of the Georgia Cooperative Marketing Act, Georgia Code, Ann. §§65-201 et seq.

7

A certified copy of the Articles of Incorporation of National Broiler Marketing Association is attached hereto and incorporated herein as Exhibit "A".

8

A certified copy of the By-Laws of National Broiler Marketing Association, as amended, is attached hereto and incorporated herein as Exhibit "B".

9

NBMA was originally organized and chartered as a cooperative association with capital stock. On December 6, 1973, the Articles of Incorporation were amended to authorize cancellation of the association's capital stock and conversion of the association to a non-profit membership cooperative association not having capital stock.

10

A certified copy of the Articles of Amendment approved December 6, 1973 together with the Judge's Order thereon, the filing of the Clerk and the certificate of the Secretary of State was filed of record in this action on January 4, 1974,

annexed as Exhibit "B" to the affidavit of Paul J. Morgan in support of a motion made by defendant NBMA to amend its answer.

11

NBMA has been operated at all times for mutual benefit of its members as producers of broilers.

12

No member of the association has been allowed more than one vote at any time.

13

The association has at no time paid dividends on stock or membership capital in excess of 8 percent per annum.

14

The association has not dealt in the products of non-members to an amount greater in value than such as have been handled by it for members.

15

The Association has been conducted at all times on a non-profit cooperative basis.

16

NBMA serves its members through cooperative marketing and cooperative purchasing activities on behalf of its members as producers of broilers.

17

NBMA has engaged in cooperative purchasing activities on behalf of its members including purchases of fish meal and other broiler feed ingredients; development and purchase of plastic coops designed for use in moving the members' live broiler chickens to the processing plant; development and purchase of plastic feeder lids for use in feeding members' broiler and breeder chicks during the first several days of the growout period; development and purchase of plastic pallets used for shipping members' ready-to-cook (dressed) broilers to customers; purchases of poly bags, boxes and other items used for packaging ready-to-cook broilers and parts, and purchases and development of other goods and services used by the members in producing and marketing broilers.

18

Purchasing activities undertaken by NBMA for the mutual benefit of its member producers have accounted for $23,308,-704.00 in total volume over the past three years.

19

NBMA also performs substantial marketing functions for its member producers, including negotiating and handling large and small volume sales of broilers for export shipment both with and without the NBMA brand name and label. NBMA takes title to all product which it handles in export sales.

20

Other marketing activities of NBMA have included the operation of a foreign trade sales program in foreign markets to handle overseas promotion, exhibits, sales, contracts, negotiations, shipping arrangements and distribution; development of specifications, ~~packaging, and other techniques and~~ services in connection with export marketing by NBMA and its members; operation of a domestic sales promotion program, including attendance and exhibition at trade shows for buyers and potential buyers and merchandisers of broilers and broiler products; and the collection and dissemination to members of extensive market information.

21

NBMA's marketing activities also include market research, production planning research, and continuing market information programs which involve the acquiring, exchange, interpretation, and dissemination of past, present, and prospective crop, market, statistical, economic and other similar information relevant to the broiler production and marketing of NBMA's members.

22

Many details of NBMA's marketing activities are set out on pages 27 through 29 of Defendant's Answers to Plaintiff's Second Interrogatories filed in this action over my signature and under oath on March 7, 1975.

23

The members of NBMA are integrated producers of broilers.

24

Integrated producers of broilers are firms (including cooperatives) which own broilers and control their production through all production stages. The stages of broiler production include maintenance of a hatchery supply flock to produce broiler chick eggs for hatching; operation of a hatchery for hatching broiler chicks; raising the broiler chicks to an age of 7 to 9 weeks, including formulation and supply of the feed, medicines, vaccines, and other supplies essential to the growth and quality of the broilers; processing of the live birds into ready-to-cook broilers; and marketing of ready-to-cook broilers.

25

All NBMA members own and control the production of their broilers throughout the growout phase, although the growout is nearly always accomplished through contractual arrangements with independent contractors, known as growers, who provide facilities and services necessary to care for the chickens during the growout period as determined by the integrators who are NBMA members.

26

Federal programs conducted by the U.S. Department of Agriculture, including programs to prevent and control surpluses and ensure orderly marketing of broilers, such as publication of Broiler Marketing Guides, broiler situation reports, and other supply and demand data, have been designed for assistance to, and implementation by, integrated broiler producers.

27

As general manager of NBMA, a cooperative association of integrated broiler producers, I have often been called upon by federal and state agencies for advice and consultation with respect to broiler production and marketing conditions and problems, including attendance at several meetings conducted by the U.S. Department of Agriculture in the process of formulating its Broiler Marketing Guides. To the best of my knowledge, such meetings were always attended by NBMA members and other integrated producers, and not by persons performing only contract growing functions.

28

On March 31, 1975, National Broiler Marketing Association was notified by the New Orleans Bank for Cooperatives that the Farm Credit Administration had approved the eligibility of National Broiler Marketing Association to borrow from the New Orleans Bank for Cooperatives. This notification came after NBMA had provided to the New Orleans Bank for Cooperatives extensive information under oath, relating to the producer qualifications of all of its members. Although National Broiler Marketing Association has not at this time requested a loan from the New Orleans Bank for Cooperatives, the eligibility of the Association to do so is now clear.

29

I have been involved in the production of broilers since approximately 1960, and I have always considered an integrated entity owning the chickens and responsible for management of the production of broilers to be a producer of broilers, and the principal risk-bearer in the production and marketing of broilers.

This 25th day of April, 1975.

/s/ BOB M. ANTHONY

Sworn to and subscribed
before me this 25th day
of April, 1975

Carolyn W. Hust
Notary Public

My Commission Expires May 6, 1976

Exhibit A

STATE OF GEORGIA

(Seal)

Office of Secretary of State

I, Ben W. Fortson, Jr., Secretary of State of the State of Georgia, do hereby certify that the twelve pages of photographed printed matter hereto attached is a true and correct copy of the original articles of incorporation, the Judge's order thereon, the filing of the Clerk and certificate of the Secretary of State for "NATIONAL BROILER MARKETING ASSOCIATION", as the same appears of file and record in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of office, at the Capitol, in the City of Atlanta, this 23rd day of April in the year of our Lord One Thousand Nine Hundred and Seventy Five and of the Independence of the United States of America the One Hundred and Ninety-Ninth

/s/ Ben W. Fortson, Jr.
Secretary of State, Ex-Officio Corporation
Commissioner of the State of Georgia.

(Seal)

Duplicate

STATE OF GEORGIA

(Seal)

Office of Secretary of State

I, Ben W. Fortson, Jr., Secretary of State of the State of Georgia, do hereby certify, that

"National Broiler Marketing Association"

was on the 15th day of September, 1970, duly incorporated under the laws of the State of Georgia by the Superior Court of DeKalb County for a period of Fifty years from said date, in accordance with the certified copy hereto attached, and that the original articles of incorporation of said corporation has been duly filed in the office of the Secretary of State and the fees therefor paid, provided by law.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of office, at the Capitol, in the City of Atlanta, this 15th day of September, in the year of our Lord One Thousand Nine Hundred and Seventy and of the Independence of

the United States of America the One Hundred and Ninety-Fifth.

BEN W. FORTSON, JR.
Secretary of State, Ex-Officio Corporation
Commissioner of the State of Georgia

ARTICLES OF INCORPORATION OF NATIONAL BROILER MARKETING ASSOCIATION

We, the undersigned, all of whom are engaged in the production of agricultural products, do hereby voluntarily associate ourselves together for the purpose of forming a cooperative association, with capital stock, under the provisions of the Cooperative Marketing Act of the State of Georgia, being Sections 65-201 through 65-231 of the Code of Georgia, and we hereby petition the Superior Court of DeKalb County, Georgia for Articles of Incorporation, as follows:

Article I
Name

The name of the association shall be National Broiler Marketing Association.

Article II
Purposes

The purposes for which the association is organized are:

(a) To engage in any activity involving or relating to the buying, receiving, grading, processing, packaging, storing, financing, preserving, shipping, handling, marketing, selling and distributing agricultural products produced by its members, and with respect to the buying, handling, manufacturing or selling of supplies, equipment and machinery necessary or incidental to the production of agricultural products;

provided, however, the association shall not deal in the agricultural products of non-members in an amount greater in value than that handled for members; nor shall the association handle or sell to non-members supplies, equipment or machinery in an amount greater than that sold or furnished by it to members; and the term "agricultural products" as used herein shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and any farm products.

(b) To promote, encourage, foster and facilitate the economic, orderly and efficient production, distribution and sale of agricultural products; to engage in and carry on programs of research and development relating to the improvement in methods of production, processing, packaging, preserving, storing, marketing and distributing such products and to engage in and carry on programs to promote the public acceptance and use of such products.

(c) To borrow money without limitation as to amount and to give any kind or form of obligation or security therefor, and to make advances to its members and other producers.

(d) To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer or pledge shares of the capital stock or bonds of any corporation or association engaged in any activity related to the production or handling of agricultural products.

(e) To buy, lease, hold and exercise all privileges of ownership over such real and personal property as may be necessary or convenient for the conduct and operation of the business of the association or incidental thereto.

(f) To draw, make, accept, endorse, guarantee, execute and issue promissory notes, bills of exchange, drafts, warrants, certificates, and all kinds of obligations and negotiable or transferable instruments of any kind that is deemed necessary to further the objects for which this association is formed and to give a lien on any of its property as security therefor.

(g) To establish, secure, own and develop patents, trademarks and copyrights connected with or incidental to the business of the association.

(h) To cooperate with its members in conducting educational work concerning the value of cooperative marketing and to cooperate with its members and with state and federal agencies in acquiring, exchanging, interpreting and disseminating past, present and prospective crop, market, statistical, economic and other similar information concerning or relating to the supply of and demand for agricultural products.

(i) To cooperate with other similar associations and corporations in creating regional or national cooperative agencies for any of the purposes for which this association is formed and to become a member or stockholder of such agencies as are now or hereafter may be formed.

(j) To act as the agent and representative of its members in the performance of any of the activities mentioned in these Articles of Incorporation.

(k) To establish lawful reserves and to invest the funds thereof in bonds or in such other property as may be provided for in the by-laws.

(l) To have and exercise, in addition to the foregoing, all powers, privileges and rights conferred on ordinary corporations and cooperative associations by the laws of the State of Georgia and all powers and rights incidental or conducive to carrying out the purposes for which this association is formed, except such rights and powers as are inconsistent with the express provisions of the Act under which this association is incorporated and to do any such thing anywhere; and the enumeration of the foregoing powers shall not be held to limit or restrict in any manner the general powers which may by law be possessed by this association, all of which are hereby expressly claimed.

Article III

Place of Business

The association shall have its principal place of business in the City of Atlanta, DeKalb County, Georgia.

Article IV

Period of Existence

The term for which this association shall exist is fifty (50) years from and after the date of its incorporation.

Article V

Directors

The number of directors of the association shall be not less than five and not more than the number fixed by the by-laws of the association. The names and addresses of those who are to serve as incorporating directors and until the first meeting of the members of the association or until their successors are elected and qualified are:

Name	Address
A. C. Smith	P. O. Box 226 Cumming, Georgia 30130
Maynard Sylvest	P. O. Box 2754 Montgomery, Alabama 36105
Lonnie A. Pilgram	P. O. Box 622 Pittsburg, Texas 75686
Paul J. Morgan	Robbins North Carolina
Marshal Durbin	2320 Second Avenue, South Birmingham, Alabama 35233

Article VI

Capital Stock

Section 1: The Capital stock of the association shall consist of not less than ten nor more than one thousand shares of common stock of the par value of $100.00 per share. The association shall also have the right to issue preferred stock from time to time having a par value of $100.00 per share, but there shall not be outstanding at any time more than 5,000 shares of preferred stock.

Section 2: The holders of the common stock of this association shall be the members of the association. The common stock of this association may be purchased, owned or held only by producers of agricultural products and cooperative associations of such producers, who shall patronize the association in accordance with uniform terms and conditions prescribed thereby, and only such persons shall be regarded as eligible members of the association. In the event the Board of Directors of the association shall find, following a hearing, that any of the common stock of this association has come into the hands of any person who is not an eligible member, or that the holder thereof has ceased to be an eligible member, such person shall have no rights or privileges on account of such stock or vote or voice in the management of the affairs of the association (other than the right to participate in accordance with law in case of dissolution and to receive the par value or book value of such stock, whichever is less, in the event of its sale, transfer or conversion as herein provided). The association, upon such a finding, shall have the right, at its option, (a) to purchase such common stock at its book or par value, whichever is less, as determined by the Board of Directors of the association; (b) to require the transfer of such stock at such book or par value to any person eligible to hold it; or (c) to require such holder of such stock to convert it into shares of preferred stock of equal par value. In exercising its right to purchase or to require the transfer or conversion of such common stock, the association may, if the holder thereof fails to deliver the certificate evidencing the stock, cancel such certificate on its books and issue a new certificate of common or preferred stock, as the case may be, to the person entitled thereto.

The common stock of this association may be transferred only with the consent of the Board of Directors of the association and on the books of the association, and then only to persons eligible to hold it; and no purported assignment or transfer of common stock shall pass to any person not eligible to hold it, any of the rights or privileges on account of such stock or vote or voice in the management of the affairs of the association. Each eligible holder of common stock shall be entitled to only one vote in any meeting of the stockholders, regardless of the number of shares of stock owned by such person. Non-cumulative dividends of not to exceed 6% per annum may be paid upon the common stock, when funds are available therefor, if, as and when dividends are declared by the Board of Directors; provided, however, no dividends shall be payable to owners of common stock unless and until dividends have first been paid to the owners and holders of the preferred stock of the association. This association shall have a lien on all of its issued common stock for all indebtednesses of the holders thereof to the association.

Section 3: The preferred stock of this association shall be issued in annual series, may be held by anyone but shall carry no voting rights and may be transferred only on the books of the association. Non-cumulative dividends of 8% per annum may be paid on preferred stock if, as and when declared by the Board of Directors of the association. The preferred stock may be redeemed by series in whole or in part on a pro rata basis at par, plus any dividends declared thereon and unpaid, at any time upon thirty days notice by the association, provided said stock is redeemed in the same order as originally issued by years. On the failure of the holder or holders to deliver the certificate or certificates evidencing any such redeemed stock, the association may cancel the same on its books. Stock which has been redeemed may, in the discretion of the Board of Directors, be re-issued or retired. All such preferred stock so redeemed shall be paid for in cash at the par value thereof, plus any dividends declared thereon and unpaid and such stock shall not bear dividends after it has been called for redemption. Notwithstanding any of the foregoing provisions, the Board of Directors shall have the power from time to time and at any time to pay off or retire or secure a release or satisfaction of any preferred stock certificates to compromise or settle a dispute between the holder thereof and the association, or to settle an estate of a deceased or bankrupt stockholder or to close out a stockholder's interest when he has moved from the territory served by the association. Upon dissolution or distribution of the assets of the association the holders of all preferred stock shall be entitled to receive the par value of their stock, plus any dividends declared thereon and unpaid, before any distribution is made on the common stock, but preferred stockholders shall not further participate in the assets of the association.

Section 4: This association is authorized to issue revolving fund certificates as may be provided for in the by-laws of the association.

In Testimony Whereof, the undersigned incorporators of said association have hereunto set their hands on this the 26th day of August, 1970.

MARSHAL DURBIN FARMS
MARSHAL DURBIN, SR.
PAUL MORGAN
A. C. SMITH
LONNIE A. PILGRAM
MAYNARD SYLVEST

In the Superior Court of
Dekalb County, Georgia

The petition of Marshal Durbin, Paul J. Morgan, A. C. Smith, Lonnie A. Pilgram, and Maynard Sylvest, petitioners, shows the Court as follows:

1

The Articles of Incorporation of National Broiler Marketing Association executed by the incorporators are attached hereto.

2

The Certificate of the Secretary of State that the name "National Broiler Marketing Association" is available is attached hereto.

Wherefore, petitioners pray that National Broiler Marketing Association be incorporated as an association under the Cooperative Marketing Act (Ga. L. 1921, p. 139).

/s/ CHARLES T. ZINK
Attorney for Petitioners

HANSELL, POST, BRANDON & DORSEY
3300 First National Bank Tower
Atlanta, Georgia 30303
522-3558

Order

Upon consideration of the foregoing petition, it appearing that the same is legitimately within the purview and intention of the Code of Georgia 1933, Sections 65-201 to 65-231, both inclusive, as amended, and it further appearing to the Court that

the name of the proposed corporation is not the name of any other existing corporation registered in the records of the Secretary of State of Georgia:

It Is Therefore Ordered, that the petition be granted and filed, and that petitioners be and they are hereby incorporated under the name and style of National Broiler Marketing Association, for a period of fifty years, with all the rights and powers prayed for in said petition and with all the rights and powers given by law to a corporation of a similar nature.

This the 15th day of September, 1970.

/s/ HUBERT C. MORGAN
Judge
Superior Court Stone Mountain Circuit

I swear that the contents of the above and foregoing petition are true and correct, so help me God.

/s/ A. C. SMITH

Sworn to and subscribed before me this 11th day of September, 1970.

(Illegible)
Notary Public
Forsyth County, Georgia

New Era Publishing Company Inc.
525 Marshall Street
P. O. Box 310
Decatur, Georgia 30031

Publisher's Affidavit

Georgia—DeKalb County

Personally appeared before the undersigned attesting officer, duly authorized to administer oaths, Carol E. Wheeler, who first being duly sworn, deposes and says on oath that he/she is the Bookkeeper of The DeKalb New Era, a newspaper having a general circulation and its principal office in DeKalb County, Georgia, and that there has been deposited with said newspaper sufficient funds to cover the costs of advertising the (Petition, Articles of Incorporation) entered thereon in the matter of National Broiler Marketing Association, once a week for four weeks.

/s/ CAROL E. WHEELER

Sworn to and subscribed before me this 15th day of September 1970.

/s/ JEAN B. EVANS
Notary Public

Notary Public, Georgia State at Large

My Commission Expires March 9, 1971

STATE OF GEORGIA

Office of Secretary of State

I, Ben W. Fortson, Jr., Secretary of State of the State of Georgia, do hereby certify, that based on a diligent search of the

records on file in this office, I find that the name of the following proposed domestic corporation to wit

"NATIONAL BROILER MARKETING ASSOCIATION"

is not identical with or confusingly similar to the name of any other existing domestic or domesticated or foreign corporation registered in the records on file in this office or to the name of any other proposed domestic or domesticated, or foreign corporation as shown by a certificate of the Secretary of State heretofore issued and presently effective.

This certificate is in full force and effective for a period of 4 calendar months from date of issuance. After such period of time, this certificate is void.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of office, at the Capitol, in the City of Atlanta, this 3rd day of September, in the year of our Lord One Thousand Nine Hundred and Seventy and of the Independence of the United States of America the One Hundred and Ninety-Fifth

/s/ BEN W. FORTSON, JR.
Secretary of State
Ex-Officio Corporation
(Seal) Commissioner of the State of Georgia

Filed in Office This 15th Day of September, 1970.

THERON BURGESS,

Georgia, DeKalb County:

I, Theron Burgess, Clerk of Superior Court, in and for said County, hereby certify that the foregoing is a true and correct copy of Articles of Incorporation of "National Broiler Marketing Association" and Order of Court, granting same, as appears of file and of Record in my office, and that all cost in said proceedings have been paid.

Witness my hand and the seal of said Court, this 15th day of September, 1970.

/s/ THERON BURGESS
Clerk Superior Court,
DeKalb County, Georgia

Exhibit B

BY-LAWS
OF
NATIONAL BROILER MARKETING ASSOCIATION

Article I
Purposes and Powers

The purposes for which this association is formed and the powers it may exercise are set forth in the Articles of Incorporation of the association.

Article II
Membership and Membership Meetings

Section 1: Qualifications: No person, firm or corporation shall be eligible for membership in this Association unless such person, firm or corporation shall be a producer of agricultural products, or an association of such producers, and shall also patronize this Association in accordance with uniform terms and conditions prescribed by the Board of Directors of the Association. Applications for membership in the Association shall be made in writing on a form provided by the Association and upon payment of a $100.00 membership fee and the acceptance of such application there shall be issued to the newly accepted member a membership certificate, which certificate shall be the only evidence of membership in the Association.

Section 2. Termination of Membership: In the event the Board of Directors shall find, following a hearing, that any member of the Association has ceased to be eligible for membership, the membership certificate of such member shall be cancelled and such member shall thereupon cease to be a member of the Association and shall thereafter have no vote or voice in the management of the Association or any property interest in the Association other than such interest as shall be accorded to him by law or by these By-Laws of the Association.

Section 3. Non-Transferable: Membership in the association shall not be transferable except by and with the consent of the Board of Directors of the association.

Section 4. Annual Meeting: The annual meeting of members of this association shall be held within 120 days after the end of the fiscal year of the association at such place and at such time as may be determined by the Board of Directors.

Section 5. Special Meetings: Special meetings of members may be held at any time and place as the President or a majority of the Board of Directors may order and a special membership meeting shall be called by the President upon written request of 25% of the members of the association.

Section 6. Notice: Notice of annual meetings shall be mailed to the last known address of each member at least ten days prior to the meeting. Notice of special meetings shall be given by mail, telegram or telephone at least three days prior to the meeting. No notice of either the annual meetings or any special meeting need state the purpose of the meeting unless the laws under which this association is incorporated require that the nature of the business to be transacted at such meeting shall be stated in the call or notice of the meeting.

Section 7. Quorum: 50% of the members in good standing present in person or by proxy at any membership meeting shall constitute a quorum for the transaction of business at such meeting.

Section 8. Voting: Each member of the association shall be entitled to only one vote upon each matter submitted to a vote at a meeting of members. Unless otherwise required by law, all questions shall be decided by a majority of the members voting thereon. Voting by proxy shall be permitted and voting by mail or wire confirmed by mail, on specific questions, shall be permitted by and with the consent of the Board of Directors and such votes shall be on ballots prescribed by the Board, which ballots shall state the time at which the vote shall be counted.

Article III
Directors

Section 1. Number and Qualification: The business and affairs of the Association shall be controlled by a Board of Directors of not less than five members nor more than 12 members, one of whom shall be appointed by the Commissioner of Agriculture of the State of Georgia to serve until his successor shall be appointed, and the remainder of which Board shall be elected in the manner provided in Section 2 of these By-Laws as in effect on the date of the adoption of this by-law amendment. Each elected member of the Board shall be a member of the Association or an agent or employee of a person, firm, or corporation which is a member of the Association.

Section 2. Election of Directors: At the first meeting of members of this association the members shall create five districts which are fairly representative of the broiler industry in the United States, and following the establishment of such districts directors shall be elected as follows:

(a) At the first meeting of members and at each succeeding annual membership meeting, the members of this association shall elect one member of the Board of Directors from each such district.

(b) At the first meeting of members and at each succeeding annual membership meeting, the members shall elect six directors at large; provided, however, that at all regular annual meetings of members after the first membership meeting the six directors at large shall be chosen as follows: The Treasurer shall advise membership of the three districts from which members of this association shall have provided, during the preceding fiscal year, the greatest dollar volume of patronage to this association and three directors shall be elected from the district whose members have provided the highest volume of patronage, two directors shall be elected from the district which shall have provided the second highest volume of patronage and one director shall be elected from the district which shall have provided the third highest volume of patronage. If any member has operations in more than one district the patronage of such member may, at the option of such member, be allocated to the district wherein the principal office of such member is located or may be prorated between the districts wherein such member produces broilers according to the number of broilers produced by such member in each district.

Section 3. Term: Directors shall be elected at each annual meeting of members to serve for a term continuing until the next annual membership meeting and until their successors are elected and qualified.

Section 4. Vacancies: If a directorship shall become vacant, the vacancy shall be filled for the unexpired term by the Board of Directors, provided, however, a vacancy shall be filled by a member of this association from the same district as the director whose death, resignation or removal created the vacancy.

Section 5. Quorum: 50% of the Board of Directors shall constitute a quorum at any meeting of the Board.

Section 6. Compensation: The compensation, if any, of the Board of Directors shall be determined by the members of the association, but the reasonable expense of the individual members of the Board of Directors arising from the attendance at Board meetings shall be paid by this association if so ordered by the Board.

Section 7. Management of Business: The Board of Directors shall manage the business and affairs of the association and shall make the necessary rules and regulations relating to the management of the business and guidance of the officers, employees and agents of the association, which rules and regulations shall not be inconsistent with these by-laws or the laws under which this association is organized.

Section 8. Bonding: The Board of Directors may require that the Treasurer and any and all other officers, agents and employees charged by the association with the responsibility for the custody of the funds and property of the association shall give bond with sufficient surety for the faithful performance of their official duties.

Section 9. Meetings: Annual meetings of the Board of Directors shall be held immediately following the membership meeting at which the Board was elected, and no notice of such meeting shall be necessary. The Board shall also hold regular meetings at least once each third month and special meetings may be called at any time by the President or by any three members of the Board. Any business of the association may be transacted at any regular or special meeting of the Board

without the necessity of the notice or call of the meeting stating the business to be transacted, unless such prior notice of the business to be transacted is expressly required by the law under which this association is organized.

Section 10. Notice of Meetings: Oral or written notice of all meetings of the Board, other than regular annual meetings, shall be given by the Secretary or by some other officer of the association designated by the Board, to each director at least forty-eight hours prior to such meeting, but such notice may be waived by all directors and appearance at a meeting shall constitute a waiver of notice thereof.

Section 11. Executive Committee: The Board of Directors may, at its discretion, appoint from its own membership an executive committee of five or more members, which committee shall have such powers, discretions and duties as may, from time to time, be prescribed by the Board, subject to the general direction, approval and control of the Board. Minutes of meetings of such executive committee shall be recorded in the minute book of the association and copies of all minutes concerning action taken by the executive committee shall be mailed to all directors within one week of the date on which the meeting of the executive committee was held.

Section 12. Alternate Directors: The Board of Directors shall elect not less than two nor more than five alternate directors who shall be elected at large from members of the Association and shall attend all Board meetings and who shall be entitled to participate in all discussions of the Board. Such alternate directors shall not, however be entitled to vote unless one or more of the directors are absent from a meeting of directors, in which event the alternate directors shall temporarily, and for purposes of such meeting only, fill the vacancy of the director or directors who are absent from such meeting and may vote for and in lieu of the absent director or directors, but in no event shall such alternate directors have more than one vote for each alternate director in attendance at the meeting.

Article IV
Officers

Section 1. Election: At each annual meeting of the Board, the Board shall elect by ballot a Chairman of the Board, a President, one or more Vice Presidents, a General Manager, a Secretary and a Treasurer, each of whom shall, subject to the discretion of the Board, hold office for one year or until the election and qualification of his successor. Only the Chairman of the Board, the President and Vice President need be members of the Board of Directors. The offices of Chairman of the Board and President may be combined in one person, as may also the offices of President and General Manager if the General Manager be a member of the Board. The Secretary and the Treasurer need not be members of the Board, and such offices may also be combined in one person. The Chairman of the Board shall be the Chief Executive Officer of the Association, may call and shall preside at all meetings of directors and of membership, shall be an ex officio member of all committees and shall perform all duties customarily performed by the Chief Executive Officer of a corporation. In the absence or disability of the Chairman, the Vice President with the longest tenure in office as such shall perform all duties of the Chairman of the Board.

Section 2. President. The President shall be the Chief Operational Officer of the Association, shall supervise the performance of the duties of all employees of the Association, including the General Manager, and, if the offices of President and General Manager are combined, shall perform all the duties of General Manager. The President shall also perform such other duties as may, from time to time, be assigned to him by the Board, including the execution of all contracts and documents required

to be executed by the Association, provided, however, the Board of Directors may authorize any officer or agent of the corporation to execute particular contracts and documents required to be executed by the Association.

Section 3. Vice President: The duties of the Vice President shall be to perform the duties of the President in the absence or disability of the President and if there shall be more than one Vice President, the Board shall designate the order in which the Vice Presidents shall succeed to the responsibility for the performance of the duties of the President.

Section 4. Secretary: The duties of the Secretary shall be to:

(a) Keep a complete record of all meetings of the association and of the Board of Directors and the executive committee, and to have general charge and supervision of the books and records of the association.

(b) Sign, with the President, all instruments on behalf of the association, subject to the provisions of Section 2(c) of this article.

(c) Serve all notices required by law and by these by-laws and make a full report of the matters and business pertaining to his office to the members at the annual meeting.

(d) Be custodian of all property of the association.

(e) Make all reports required by law and perform such other duties as may be required of him by the association or by the Board of Directors.

Section 5. Treasurer: The duties of the Treasurer shall be to:

(a) Perform such duties with respect to the finances of the association as may be prescribed by the Board of Directors and to make all necessary reports to the Board and perform all duties that may properly be required of him by the Board.

Section 6. General Manager: Under the supervision of the Board of Directors, the General Manager shall have charge of the ordinary and usual day to day business operations and affairs of the association and shall attend all meetings of the Board of Directors unless excused by the President. Subject to the general approval of the Board of Directors, the Manager shall employ, supervise and dismiss all agents and employees of the association.

Section 7. Indemnification of Officers and Directors: The corporation shall indemnify any and all persons who may serve or who have served at any time as directors or officers, and their respective heirs, administrators, successors and assigns against any and all expenses, including amounts paid upon judgments, counsel fees, and amounts paid in settlement (before or after suit is commenced), actually and necessarily incurred by such persons in connection with the defense or settlement of any claim, action, suit, or proceeding in which they, or any of them, are made parties, or a party, or which may be asserted against them or any of them, by reason of being or having been directors or officers of the corporation, except in relation to matters as to which any such director or officer or former director or officer shall be adjudged in any action, suit, or proceeding to be liable for his own negligence or misconduct in the performance of his duty. Such indemnification shall be in addition to any other rights to which those indemnified may be entitled under any law, bylaw, agreement, vote of stockholders, or otherwise.

Article V
Membership Certificates

This Association shall be a non-stock membership cooperative association issuing to its members a membership certificate of the following form and content:

Membership Certificate

No. . . . .

This certifies that . . . . of . . . . is a member of National Broiler Marketing Association and is entitled to all of the rights, benefits and privileges of the Association.

Dated. . . . .

. . . .
President

. . . .
Secretary

Article VI
Financial Affairs

Section 1. Operation at Cost: The association shall at all times be operated on a cooperative service-at-cost basis for the mutual benefit of its patrons. No interest or dividends shall be paid by the association on any patronage capital furnished by the patrons as provided in the next succeeding section of this article.

Section 2. Refunds and Patrons' Capital: In furnishing service, such as marketing products, providing supplies and equipment, or otherwise making facilities or services available to its patrons, the association's operations shall be so conducted that all patrons will, through their patronage, furnish capital for the association. To assure that the association will operate on a service-at-cost basis, the association is obligated to account on a patronage basis to all its patrons for all amounts received from the furnishing of these services in excess of operating costs and expenses properly chargeable against the type of service furnished. All such amounts in excess of operating costs and expenses shall, at the moment they are received by the association from the patrons, be received with the understanding that they are provided as capital. The association is obligated to make payments of all such amounts in excess of operating costs and expenses in cash refunds or by credits to a capital account for each patron. The books and records of the association shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each patron is clearly reflected and credited in an appropriate record to the capital account of each patron. The association shall, within 8½ months after the close of the fiscal year, notify each patron, in the form of a written notice of allocation (as defined in 26 U.S.C., Section 1388), of the amount of capital so credited to his account. All other amounts, such as interest on amounts from non-patronage sources, received by the association from its operations in excess of costs and expenses shall, insofar as permitted by law and to the extent practical, be allocated to its patrons on a patronage basis and any amount so allocated shall be included as a part of the capital credited to the accounts of patrons as herein provided. An operating loss shall be apportioned among the patrons during the year of loss so that such loss will, to the extent practical, be borne by the patrons of the loss year on an equitable basis. If in any fiscal year the association shall incur a loss other than an operating loss, the Board shall have full authority to prescribe the basis on which capital furnished by patrons may be reduced or such loss otherwise equitably apportioned among the patrons.

Section 3. Revolving Capital: If, at any time, the Board shall determine that the financial condition of the association will not be impaired thereby, the capital then credited to patrons' accounts may be retired in full or in part. Any such retirement of patrons' capital shall be made in order of priority according to the year in which the capital was furnished and credited, the capital first received by the association being first retired. Notwithstanding any other provision of these by-laws the Board, at its discretion, shall have the power to retire any capitol credited to patrons' accounts on such terms and conditions as may be agreed upon by the parties in any instance in which the interest of the association and its patrons are deemed to be furthered thereby and funds are determined by the Board to be available for such purposes.

Section 4. Transfer: No assignment or transfer of any amount credited to the capital account of a patron shall be binding on this association without the consent of the Board nor until it shall have been entered in the books of this association. The association shall be entitled at its option at any time to set off against the capital account of any patron any part or all of the indebtedness of such patron to this association.

Section 5. Consent: Each person who hereafter applies for and is accepted to membership in this association and each member of this association on the effective date of this by-law who continues as a member after such date shall, by such act alone, consent that the amount of any distributions with respect to his patronage occurring after the effective date of this by-law, which are made in written notices of allocation (as defined in 26 U.S.C., Section 1388), and which are received by him from the association, will be taken into account by him at their stated dollar amounts in the manner provided in 26 U.S.C., Section 1385(a), in the taxable year in which such written notices of allocation are received by him.

Section 6. Accounting System: The Board of Directors shall cause to be installed a standard, approved system of accounts and other accounting procedures so that at all times the books of the association shall accurately reflect the financial condition of the association.

Section 7. Annual Audit: The records and accounts of the association shall be audited once each year by a competent public accountant and the annual audit report shall be presented at the annual meeting of members and a copy thereof kept in the permanent files of the association.

Section 8. Records: At all times accurate records and accounts shall be kept by the association from which may be readily determined the exact amount of business done with the association by each of its patrons.

Article VII
Dissolution

Upon dissolution, all debts and liabilities of the Association shall be first paid, the membership fees paid by the members shall then be refunded, all capital furnished through patronage shall then be retired without priority on a pro rata basis, and the remaining property and assets of the Association, if any, shall be distributed among the members and former members in the proportion which the aggregate patronage of each member bears to the total patronage of all members.

Article VIII
Fiscal Year

The fiscal year of the association shall commence on the first day of January of each year and shall end on the last day of December.

Article IX
Construction of By-Laws and Contracts

It is the purpose and intention of this association to promote the agricultural interest of its members by lawful means only, and, accordingly, any of these by-laws and any contracts or agreements made by this association which may be in conflict with the laws of the United States or of the State of Georgia

shall be taken and interpreted as amended and modified by such laws to the extent that may be necessary to uphold the validity of such by-laws, agreements or contracts. This association shall also at all times cooperate fully with the United States Department of Agriculture in seeking to carry out and make effective the Marketing Guides published by said department, and this association shall never itself take any action or recommend to its members that the members of this association take any action which would be inconsistent or in conflict with the published recommendations of said department. To the extent that said department shall be willing to receive such advice, this association shall keep the said department fully informed as to any and all policies and programs which may be recommended by this association to its members to carry out and make effective the Marketing Guides published by said department.

Article X
Amendments

If notice of the character of the amendment proposed shall have been given in the notice of a membership meeting, these by-laws may be altered or amended by any regular or special meeting of members by the affirmative vote of a majority of the members of the association in attendance at such meeting, provided that a quorum of members is present in person or by proxy.

Certificate

I, HUGH PURNELL, Secretary of National Broiler Marketing Association, hereby certify that the above and foregoing "BY-LAWS OF NATIONAL BROILER MARKETING ASSOCIATION" constitutes and is a full, true and correct copy of the By-Laws of said Association as in force and effect on the date of the execution of this Certificate.

THIS the 25 day of April, 1975.

/s/ HUGH PURNELL
Secretary

In the United States District Court for the
Northern District of Georgia
Atlanta Division

(Title omitted in printing)

AFFIDAVIT OF IRSTON R. BARNES

(Filed May 1, 1975)

State of Connecticut
County of New Haven

I, Irston R. Barnes, after first being duly sworn, on oath depose and say the following:

1

I am an economic consultant, having my principal office at 58 North Branford Road, Wallingford, Connecticut, 06492.

2

I make this affidavit for use by National Broiler Marketing Association in support of its Motion for Summary Judgment in this action.

3

I am a graduate of Yale College with a major in economics. I also received a Ph. D. in economics from Yale University.

4

My professional career in economics has been divided between university teaching, government service, and independent economic consulting.

5

I was for thirteen years a member of the Economics Department of Yale University, where, in addition to other courses, I taught graduate and advanced undergraduate courses in government regulation of business and antitrust and trade regulation. In 1948-1949, I was a visiting professor at the Graduate School of Business at Columbia University, and from 1960 to 1963, I was professor of political economy at the Graduate School of Business, teaching courses in government regulation and economic institutions.

6

From 1941 to 1944, I was a consulting economist in the Antitrust Division of the Department of Justice. From 1944 to 1948, I was at the Civil Aeronautics Board, first as Director of the Economics Bureau, and subsequently as Economic Adviser to the Board. From 1948 to 1960, I was at the Federal Trade Commission, serving at times as Chief of the Division of Economic Evidence and as Economic Adviser to the Bureau of Litigation.

7

I began consulting work in 1960 and since 1963, I have devoted all my time to consulting. My practice has been principally concerned with antitrust and trade regulation, but it has also involved transportation, gas and electric utilities, and communications companies.

I have testified in some sixteen litigated matters, for the government and for private parties, before the Federal District Courts, the Federal Trade Commission, the Interstate Commerce Commission, and the public utility commissions of New York, Pennsylvania, and Maryland. I have also testified on a variety of antitrust subjects before committees of the Congress.

8

I have published three books on public utility regulation and numerous articles in economic and law journals on antitrust and trade regulation and public utility regulation. And on numerous occasions I have discussed antitrust enforcement problems as a member of panels sponsored by The Conference Board (formerly, the National Industrial Conference Board), the Practising Law Institute, and the American Law Institute—American Bar Association.

9

In the course of my professional work, I have prepared, conducted and analyzed numerous surveys of economic and business facts. I have had substantial experience in the preparation of tabulations, summaries and analyses of economic facts and data from such surveys for evidentiary use.

10

In June, 1974, a Membership Survey of Relations with Growers, designed by me and prepared under my supervision, was mailed to all current members of the National Broiler Marketing Association. The development, preparation, pretesting, conduct and analysis of the survey were carried out under my direct and continuing supervision. At the time of mailing, there were 65 members of NBMA. Survey returns were received from 60 members; no returns were received from 5 members.

11

As received, the survey returns were duplicated and copies were reviewed by me, by NBMA's attorney, and by the NBMA coordinator. During the period when members were completing the survey, the NBMA coordinator was available to answer any questions that the members might have, and if necessary to explain or interpret the questions. On all matters of substance, the NBMA coordinator consulted with me and with the attorney before responding to questions received from members.

12

As received, the survey returns were examined for consistency of answers with known industry facts by the NBMA coordinator. I reviewed all survey returns independently, and they were also reviewed independently by the attorney for the sufficiency of answers and for internal consistency. Following these independent reviews I conducted a review of each survey return jointly with the attorney and the NBMA coordinator, and any deficiencies in the surveys were noted. I then instructed the coordinator to communicate with members for the purpose of correcting any deficiencies in the survey returns and also for the purpose of confirming our understanding and interpretation with respect to data reported in an unclear or questionable manner.

Where revisions were required to correct deficiencies in the survey, members were asked to furnish confirmatory affidavits setting out all additions and revisions.

13

Some of the survey questions permitted answer by reference to the member's standard grower contract submitted with the survey return. Such questions, where not fully answered on the survey form by the member, were answered by the NBMA attorney in accordance with my direction on the basis of the contract submitted by the member. Where the questions were answered on the survey form by the member, those answers were verified by the attorney on the basis of an examination of the contract submitted by that member.

14

While the survey was still in progress, a number of private treble damage actions were brought against NBMA and some of its members and also against some non-member producers. As a result of this private litigation, 21 members have resigned from membership in NBMA as of April 15, 1975, presumably as a means of limiting any further potential liability. The private litigation partially disrupted the original plan to secure confirmation of all revisions and additions to correct survey deficiencies by having members execute affidavits. Consequently, the present compilation covers 54 members and former members of NBMA, 42 of which have executed affidavits verifying their survey returns and any additions and revisions thereto, and 12 of which have provided information which completes their respective surveys in a satisfactory manner but without the executed affidavit.

15

No data are compiled and reported with respect to 6 members and former members whose survey returns remain incomplete, or, of course, for 5 former members who failed to return the survey.

16

Tabulations of data reported in the Membership Survey of Relations with Growers are attached to and incorporated in this affidavit as Tables G-1, G-2, G-3, G-4, G-6 and G-7. All tabulations were prepared by me and have been verified to the original surveys by two verifiers under my direct supervision.

17

The production of ready-to-cook broilers involves six functions which are generally performed under the management and direction of an integrated producer, or integrator. These six functions include:

(a) The maintenance of a hatchery supply flock to produce eggs for hatching.

(b) The operation of a hatchery to incubate the eggs and to produce baby chicks.

(c) The growing of the chickens to market weight.

(d) The formulation and supply of feed, medicines, vaccines and other supplies essential to the growing operations.

(e) The processing of the live birds into ready-to-cook broilers.

(f) The marketing of ready-to-cook broilers.

18

All six operations are organized or integrated by most of the producer-members of NMBA, justifying the common reference to them and to others like them as "integrators".

19

There is no standard or prevailing form of business organization for the integrated production of ready-to-cook broilers. Most NBMA producer-members accomplish some of the essential functions through subsidiaries, through affiliated companies under common ownership, through profit and loss sharing contractual arrangements such as partnerships and joint ventures, through membership in a cooperative, or by independent contractual relations. These complex inter-company and contractual relations do not alter the basic fact that the integrator-producer-member is responsible for production and marketing decisions and bears the major risk of production and marketing.

20

More than 95% of the broilers marketed today in the United States are produced and marketed by integrated producers like the members of NBMA. (USDA, The Chicken Broiler Industry, Mkt. Res. Rep. No. 930, p. 3 (1971)).

21

The full diversity of arrangements employed by member integrators in the production of broilers is shown in Table G-1, Scope of Members' Operations and Contract Relations with Growers, attached to and incorporated in this affidavit.

22

The 54 NBMA members supplying usable returns had some 57 arrangements with respect to the ownership and operation of their hatchery supply flocks. In 34 instances, the member-producer owned and controlled the hatchery flock directly. In 13 instances, the hatchery supply flock was owned and controlled by an affiliated company under common ownership with the member-producer. In 4 instances, a subsidiary owned and controlled the hatchery supply flock. And in 6 instances, the hatchery supply function was performed for the producer-member by an independent contracting party. (Table G-1).

23

The hatcheries, which supplied the 54 reporting NBMA members with baby chicks for the growout, were owned and operated directly by the producer-member in 32 instances, by an entity affiliated with the member-producer by common ownership in 16 instances, by a subsidiary of the member-producer in 4 instances, and by an unaffiliated company under contract in 5 instances. (Table G-1).

24

Feed is the largest element of cost in producing ready-to cook broilers. The 54 reporting members were supplied by 56 feedmills. Thirty-two were owned and operated directly by the NBMA member-producers; 14 were operated by affiliates under common ownership with the member-producer; 3 were operated by subsidiaries of member-producers; and 7 were independent, supplying feed under contract. (Table G-1).

25

Integrated broiler producers typically accomplish the growout of their broiler chickens (raising the chickens from day-old chicks to seven to nine-week-old chickens) through contractual arrangements with independent contractors, referred to as growers, whereby the contracting growers provide facilities and services necessary to care for the chickens for the growout period as determined by the integrator. In menaging the growout, some 57 contractual arrangements were used by the 54 reporting members. In 37 instances, producers-members contracted directly with the growers; in 13 instances, entities affiliated with the member by common ownership contracted with the growers; and in 7 instances, subsidiaries of the member handled the growout contracting. One member grows out all of its chickens in facilities owned by the member. (Table G-1).

In addition to contracting with growers for the growout, 22 of the producer-members owned and operated some growout facilities of their own at the time of the survey. The growout capacities of these producers ranged from 49,250 to 1,503,000 birds, the average being 345,018.

26

Processing was accomplished under 64 arrangements for the 54 reporting producer-members. In 24 instances, the processing operations were owned and operated directly by the producer-members; in 18 instances, by entities affiliated with the producer-member under common ownership; in 11 instances, by subsidiaries of the member; in 2 instances through a profit and loss sharing contractual arrangement or partnership; and in 9 instances, by contract with an unaffiliated entity. (Table G-1).

27

The marketing function was handled directly by the producer-member in 23 instances, by an affiliate under common ownership in 17 instances, by subsidiaries in 10 instances, by an entity associated with the producer-member in a profit and loss sharing relationship in 2 instances, and by independent companies under contract in 10 instances. (Table G-1).

28

The integrated producer, not the contract grower, owns the broiler "crop" or flock and bears the risk of its loss, as for example, from disease or natural disaster, at all stages of production. All of the reporting NBMA members reported that the member retained title to the broiler flock during the growout period, with three exceptions. The first exception was a grower-owned cooperative member (M-27)* whose contract arrangement establishes ownership of the birds, feed and supplies in its grower members. The second exception related to a contract which provides that the producer and the grower have joint title to the birds during the growout period, but the member-producer (M-46) retains the risk of loss of the flock during that time. The third exception involves a situation where the contract purports to sell chicks to the grower, but provides that the integrator (M-47) "assumes the loss of the cost of the chicks, feed and other materials supplies" in the event of death of the birds. Thus, for all practical purposes, in all situations, even including the three exceptions, it is the producer-member which bears the risk of loss of the flock. The specific details with respect to ownership and risk of loss are set out in Table G-2, Contract Provisions regarding Title to Broilers and Risks of Loss During Growout Period, attached to and incorporated in this affidavit.

29

In addition to owning and bearing the risk of loss of the broiler chickens at all stages of production, including the growout, all NBMA members* own and bear the risk of loss of the feed used in the growout as well as the vaccines, medicines, other health supplies, and most other elements included in the cost of producing broilers. All 54 reporting producer-members stated that they, rather than their growers, perform the following functions and responsibilities with respect to the growout:

(a) make all decisions with regard to the age and size at which birds shall be marketed (one producer-member (M-7) reported that its decision-making responsibility was shared with the entity operating the processing facilities);

(b) provide supervision of the growout;

(c) pay for all feed used during the growout;

(d) pay for all medicines, vaccines and other health supplies;

(e) supply all veterinary services during the growout;

(f) provide labor and equipment for catching, cooping, and loading the live birds; and

(g) transport birds from the grower's broiler house to the processing plant at the member's expense.

Specific details are set forth in Table G-3, Members' Responsibilities During Growout Period, attached to and incorporated in this affidavit.

30

Responsibility for payment for heating fuel used during the growout normally rests with the grower, but many NBMA members share in fuel costs. Six NBMA members reported that they supply and pay for all fuel used in the growout. One member (M-2) reported paying a fuel allowance of 4 cents per roaster and 3 cents per broiler grown, and in addition, reported financing the fuel and litter costs for approximately 10% of its growers with no financing charge. One member (M-5) supplies fuel costs during the winter period, and another member pays a fuel allowance to its growers from November through February. (M-15). One member (M-30) paid a fuel allowance of 0.2 cents per pound beginning November 1, 1973. Another member (M-52) pays a fuel allowance of $15.00 per 1,000 birds during the winter months, provided that a minimum temperature is maintained in the broiler houses, while another (M-56) pays a fuel allowance of 1 cent per bird during the winter. Another member (M-58) has a contract which provides that the growers furnish fuel and litter, and the company pays the grower an allowance which, under normal management and weather conditions, covers these costs. Another member (M-62), which does not pay fuel costs, supplies the grower with LP gas on credit until the flock is picked up. (Table G-3).

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* In tabulating the data contained in the survey returns, each reporting member was assigned a code number prefixed by the letter "M". Data contained in the annexed tables relating to specific members are referred to herein by reference to members' code numbers.

* Except for Member M-27, the grower-owned cooperative whose contract arrangement establishes ownership of the birds, feed and supplies in its grower-members.

31

Litter used in the growout is normally paid for by the grower. Producer-members indicated that they did not supply and pay for litter in 38 instances, while they did supply and pay for litter in 18 instances. Two of the producer-members (M-2 and M-19) who do not pay for litter indicated that they would supply litter to their growers on credit. One (M-10) of the 18 members supplying litter indicated that its practice of paying for litter was discontinued after July of 1974, and another member (M-60) indicated that, while it supplied litter to one group of contract growers, two other geographically distinct groups of contract growers supplied and paid for their own litter. (Table G-3).

32

All but 4 reporting members responded that they assist growers with site selection, equipment selection, construction advice and other technical matters in constructing, enlarging or modernizing their broiler houses. (Table G-3).

33

In summary, NBMA's members own and bear the risk of loss of all feed, medicines, vaccines, and most other supplies essential to the production of a marketable broiler, and make all decisions with respect to production and marketing of the broilers produced under contract with growers. Specific details with respect to the producer-members' responsibilities during the growout period are tabulated in Table G-3, attached to and incorporated in this affidavit.

34

Contract growers are protected against the risks of losses through guarantees of minimum payments. All NBMA members reporting on the grower survey guarantee their contract growers minimum payments as shown by Table G-4, Contract Payments by Members to Growers, attached to and incorporated in this affidavit.

35

On the basis of an analysis of costs of representative growers, the minimum guarantees provided by NBMA members (Table G-4) more than cover the growers' investment costs. Table G-5, Investment Costs of Representative Small-to-Large Growers and Percentages of Costs to Grower Receipts, 1974, attached hereto and incorporated herein, sets out an analysis of specific costs of representative growers derived from affidavits of the growers filed in this action in support of NBMA's motion for summary judgment. With two exceptions (noted in the footnotes to Table G-5), investment costs (insurance, maintenance and depreciation on broiler houses and equipment) for the surveyed growers amounted to only 20 to 28% of the growers' receipts from contract payments. The investment costs reported in all cases represented an amount more than covered by the minimum guarantees in the contracts of all reporting members.

36

Contract guarantees of the reporting members are stated in the contract on either a per pound or per head basis. As stated on a per pound basis, the minimum contract guarantees in the reporting members' contracts ranged from .75 cent per pound to 2.6 cents per pound. Of the 36 producer-members stating contract-guaranteed minimums on a pound basis, 14 guaranteed minimum payments between 1½ and 2 cents per pound, and 17 members guaranteed minimums between 2 and 2½ cents a pound. There were 17 producer-members whose contracts stated guaranteed payment minimums on a head basis. Contract minimums among the reporting members ranged from a low of 4 cents per head to a high of 8½ cents per head. Specific details of the contract guarantees of reporting members are set out in Table G-4.

37

Table G-5 shows that representative growers who furnished affidavits relative to their costs of operations had costs other than their own labor varying from 33 to 87 percent of their annual receipts from contract payments, depending principally on the extent to which hired labor was used and included as an expense, to some extent on whether litter was furnished by the integrator and whether the grower offset the value of the used litter as fertilizer against the costs of fresh litter and cleanout expense, and the rates at which broiler houses and equipment were depreciated. The reporting growers depreciated their investments in broiler houses and equipment over relatively short periods; hence no separate interest expense was charged. The growers reported substantial differences in depreciation costs (8 to 27 percent of receipts), depending on the rates of depreciation, the ages of their broiler houses and equipment, and the extent to which their investments were fully depreciated.

38

Table G-6, Live Bird Production Costs: Percentage Distribution, attached to and incorporated in this affidavit, shows that approximately 90% of the live bird ("farm level") cost of producing broilers is accounted for by inputs supplied by the integrator. The integrator inputs include feed, chicks, medications, veterinary supplies and services, growout supervision, and labor for catching, cooping and hauling.

39

NBMA members were asked to report on the percentage distribution of their costs in procuring live birds. The significant breakdown in these costs is between the payments made to growers, which cover the costs assumed by the growers and the earnings of the growers for their labor input, and all other live bird costs.

40

Payments to growers, on an unweighted arithmetic average, were 9.93% of live bird production costs for 53 reporting producer members. The percentages paid to growers varied from 4.4% to 16% but for 41 out of the 53 reporting members, the payments to growers were between 8% and 12% of live bird production costs. (Table G-6).

41

Live bird production costs other than payments to growers averaged 90.07% (unweighted arithmetic average) for the 53 reporting producer-members. For all reporting members, production costs other than grower payments fell between 84% and 96% of total live-bird production costs. (Table G-6).

42

The largest single element of cost in the production of broilers is the cost of feed. The broiler integrator, rather than the contract grower, is the purchaser of feed or feed ingredients on the open market, and bears the risk of fluctuation in the cost of feed due to market conditions. Analysis of Table G-6 shows that the unweighted arithmetic average of feed costs to 52 reporting members was 71.62% of total live production costs.

43

The cost of chicks was, next to feed costs, the most important of the costs borne by the producer-members. The unweighted average cost of chicks for 52 reporting members was 12.38% of total live bird production costs. (Table G-6).

44

The broiler integrator, who sells broilers in a fluctuating market, has no guarantee of a remunerative price and therefore risks all of his investment in the production and marketing of broilers. Nevertheless, NBMA members guarantee to their contract growers minimum payments for the employment of their facilities and services which are at least equal to the grower's cost in each flock produced; thus the grower's contract is a "no-loss" contract.

45

The "no-loss" contract evolved in the broiler industry because of growers' unwillingness and inability to bear the risks associated with broiler production and marketing.

46

During the post-World War II period, when production of broilers in the United States has increased from less than 1 billion to more than 11 billion liveweight pounds, the marketing risks, as well as the risks of investment in feed, chicks and supplies, have been borne for the most part by integrated producers, feed dealers, processors or other growout contractors and not by individual growers. The initiative for producing broilers during this period has come from integrated producers, because individual growers have been unable or unwilling to build broiler houses, purchase equipment or buy chicks, feed

and other supplies in the absence of an integrator's "no-loss" contract program. (USDA, The Chicken Broiler Industry, Mkt. Res. Rep. No. 930, Table 1 (1971) and supplemental statistics).

47

U.S. Department of Agriculture sources show that the per capita consumption of broilers in the United States increased from 8.7 pounds in 1950 to 38.8 pounds in 1972, an increase of 445 percent in 22 years. (USDA, The Chicken Broiler Industry, Mkt. Res. Rep. No. 930, Table 1, a copy of which is attached to and incorporated in this affidavit.) I know from my reading of U.S. Department of Agriculture studies of broiler production which I consider to be reliable that, the development of broilers during this period as an inexpensive and desirable source of protein for consumers and the promotion of a broad national market for broilers as a popular commercial product were both brought about by the integrated producers, and not by growers.

48

Most contracts reserve to the producer-member the right to terminate the contract in the event of unsatisfactory performance by the grower, adverse economic conditions, or for other reasons. Analysis of Table G-7, Tenure in Member-Grower Relations, Efficiency Factors, and Competition for Growers: 1973, attached to and incorporated in this affidavit shows, however, that growers of at least average efficiency are assured by custom and practice, if not by contract, of regular placement of chicks by the broiler integrators with whom they contract. The contracts of 27 reporting NBMA members gave the grower an option to renew the contract; the contracts of 26 producer-members did not. Of the 26 producer-members whose contracts did not specifically give the grower an option to renew, 5 producer-members had contracts with provisions for placement of more than one flock, providing grower performance was satisfactory. Forty-three producer-members reported that they gave informal assurances to their growers that they would continue to place chicks with them provided performance was satisfactory, and only 10 members reported not giving such informal assurances to their growers. Only 5 producer-members gave neither a contract provision nor an informal assurance to their growers with respect to tenure arrangements, and these 5 had only 169 growers (5 percent of the total number of growers) under contract in 1973.

49

The great variety of contract and informal arrangements with respect to tenure is set forth in the various notes to Table G-7. Many contracts provide that the contract remains in force so long as it is mutually agreeable to the company and the grower, and several "new house construction" contracts guarantee a minimum of 20 flocks, a tenure of four or more years. Most contracts may, of course, be cancelled if the grower fails to give satisfactory performance measured in terms of feed conversion or production costs. Thus one contract (M-18) provides that "Failure of grower to maintain feed conversion at company average for two broods in four . . . shall terminate this contract, or [new flock will be] put in only at company discretion." The same contract reads "This contract shall be for five batches per year, provided [the company is] not forced to cut back production due to economic situations beyond [its] control." In another instance, the member (M-23) informally assures his growers of successive flocks as long as the member continues to place flocks in that area.

50

Producer-members were asked to report on the methods by which they adjusted production to changes in the seasonal demand for broilers, and their responses are tabulated in Table G-8, Order of Priorities in Procedures for Reducing Chick Placements to Adjust to Market Demand, attached to and in-

corporated in this affidavit. Extension or contraction of the period between the placement or replacement of flocks with growers in their normal sequence is by far the most frequent method employed. This method was the first recourse for 43 of the reporting members. It was used as a second choice by 6 members, and as a third choice by a single member.

Skipping some growers at the growers' option (usually during the winter months when heating costs are high and market demand is low) was the next most frequent method of reducing production employed by reporting members. Nine members reported that this method was their first recourse in accomplishing reductions in production; 13 other members reported it was a second-choice procedure; and 3 members reported that it was a third-choice procedure.

Reducing the number of birds per house is not a method used widely in adjusting the changes in production requirements. Only 2 members reported using this procedure in the first instance; 4 reported using it for second-round reductions; and 5 others reported using it as a third or later choice.

Reducing placements for some growers only was reported to be used only by 7 members, none as a first-choice procedure. Terminating some growers as a means of reducing production was reported to be a first or second choice of only 4 members; 11 other members indicated that they would resort to this procedure if they reached a third- or fourth-stage reduction in production.

51

The RTC broiler market is a typically high-risk agricultural market: the product must be marketed regardless of demand; the product is perishable; the market is subject to over-production, with many independent producers and a demand that is variable and non-predictable; the demand is seasonal and cyclical; there are close substitutes, e.g., beef and pork, available for the consumer and for the retailer; the market fluctuates weekly; the buying side of the market is concentrated, dominated by large buyers; and the sellers are comparatively small, geographically scattered and poorly informed as to market conditions. In a market with such imperfections, there is a special need for improvements in the flow of market signals to producers to allow them to balance production with anticipated demand.

This 25th day of April, 1975.

/s/ IRSTON R. BARNES

Sworn to and subscribed before me this 25 day of April, 1975.

ETHEL B. PRONOVOST
Notary Public

My Commission Expires March 31, 1978.

NBMA SURVEY OF MEMBER - GROWER RELATIONS: SCOPE OF MEMBERS' OPERATIONS AND CONTRACT RELATION WITH GROWERS: 1974
Table G-1
Page 1 of 8

Member	Member's Functions Include—							Contracting with Growers	
	Hatchery Supply Flock	Hatchery	Feed Mill	Grow-Out Contracting	Grow-Out Facilities	Processing	Marketing	Directly	Thru Affiliate (Relationship)
M 2	C	C	C	D	None	D	D	Yes	P,C[a]
M 3	C	C	C	D	None	A	A	Yes	
M 4	C	C	C	D	140,000	D	D	Yes	
M 5	D	D	D	D	None	A,C[b]	A,C[b]	Yes	
M 6	D	D	D	D	84,000	A,C[c]	A,C[c]	Yes	
M 7	A	A	A	D	None	A[d]	A[d]	Yes	
M 8	D[e]	D[e]	D	NC[f]	584,000	A	A	NC[f]	
M 9	D	D	A	D	None	A	A	Yes	
M 10	A	A	A	D	560,000[g]	A	A	Yes	
M 11	C	A	A	A	None	D	D	No	A
M 12	D	D	D	A	50,000	O	O	No	A
M 13	A	A	A	A	None	A	D	No	A
M 14	O	O	O	D	None	C	C	Yes	
M 15	D	A	D,C[h]	D	None[i]	P	P	Yes	
M 16	A	A	A	A	58,000	D	D	No	A

NBMA SURVEY OF MEMBER - GROWER RELATIONS: SCOPE OF MEMBERS' OPERATIONS AND CONTRACT RELATION WITH GROWERS: 1974

Table G-1
Page 2 of 8

Member	Member's Functions Include—							Contracting with Growers	
	Hatchery Supply Flock	Hatchery	Feed Mill	Grow-Out Contracting	Grow-Out Facilities	Processing	Marketing	Directly	Thru Affiliate (Relationship)
M 17	D	D	D	D	175,000[j]	C	C	Yes	
M 18	O	O	O	O	None	D	D	No	O
M 19	D	D	D	D	None	C	C	Yes	
M 20	C	C	C	D	None	P	P	Yes	
M 21	C	C	D	D	600,000	A	A	Yes	
M 22	D	D	D	D	None[k]	D	D	Yes	D
M 23	D	D	C	D	343,000	O	O	Yes	
M 26	D	D	D	O	1,503,000	O	O	No	O
M 27	D	D	D	D	None	D	D	Yes	
M 29	D	D	D	D	None	D	D	Yes	
M 30	D	D	D	D	528,750	O	O	Yes	
M 31	D	D	D	O	225,000	D	D	No	O
M 32	D	D	D	D	None	O	O	Yes	
M 37	A[l]	A[l]	A[m]	A[n]	260,000[o]	D,C[p];D	C	No	A[n]
M 38	D	D	D	D	70,000	A[q]	A[q]	Yes	
M 39	D	D	D	O	None	D	D	No	O

NBMA SURVEY OF MEMBER - GROWER RELATIONS: SCOPE OF MEMBERS' OPERATIONS AND CONTRACT RELATION WITH GROWERS: 1974

Table G-1
Page 3 of 8

Member	Member's Functions Include—							Contracting with Growers	
	Hatchery Supply Flock	Hatchery	Feed Mill	Grow-Out Contracting	Grow-Out Facilities	Processing	Marketing	Directly	Thru Affiliate (Relationship)
M 41	A[r]	A[r]	A[s]	A[r]	None	D	D	No	A[r]
M 42	D	D	D	O	None	D	D	No	O
M 44	D	D	D	D	None	D	D	Yes	
M 45	D	D	D	D	None[t]	A	A	Yes	
M 46	D	D	D	D	None[u]	D	D	Yes	
M 47	A	A	A	A	75,000	D	D	No	A
M 48[v]	D	D	D	D	361,000	D	D	Yes	
M 49	D	D	D	D	49,250	O	D	Yes	
M 50	D	D	A	D	None	A	A		
M 51	D	D	D	D	72,000[w]	D	D	Yes	
M 52	A	A	A	A	422,400	D	D	No	A
M 53	O	O	O	D	None	O	O	Yes	
M 54	D	D	D	D	573,000	D	D	Yes	
M 55	A	A	A	D	None	A	A	Yes	
M 56	D	A	D	D	None	A[x]	A[x]	Yes	
M 57	O	O	D	O	None	D,O[y]	O	No	O

NBMA SURVEY OF MEMBER - GROWER RELATIONS: SCOPE OF MEMBERS' OPERATIONS AND CONTRACT RELATION WITH GROWERS: 1974

Table G-1

Page 4 of 8

Member	Member's Functions Include—							Contracting with Growers	
	Hatchery Supply Flock	Hatchery	Feed Mill	Grow-Out Contracting	Grow-Out Facilities	Processing	Marketing	Directly	Thru Affiliate (Relationship)
M 58	A	A	D	A	500,000	A	A	No	A
M 59	D	D	D	D	357,000	O	O	Yes	
M 60	D	D	D	A	None	A	A	No	A
M 61	D	D	D^{z}	D	None	C	C	Yes	
M 62	D	D	A	D	None	O	O	Yes	
M 63	D	D	C	D	None	A	A	Yes	
M 64	D	D	D	D, O^{aa}	None	O	O	Yes	O^{aa}

NOTES
Table G-1

Page 5 of 8

KEY:

A = Affiliation through Common Owners
C = Contract Relationship
D = Directly by Member
NC = No Contract; Member grows all birds produced
O = Ownership; Subsidiary
P = Profit and Loss Sharing Contractural Arrangement or Partnership

a. The company contracts with growers directly, and also buys live birds from three independently owned corporations, one of which has a profit and loss sharing contractual arrangement with the member-company.

b. The live bird production of the member-company is processed by two plants, one of which is owned by a corporate entity affiliated with the member by common ownership, the other of which is independently owned and operated.

c. The live bird production of the member-company is sold to four different entities, one of which is owned almost entirely by the owners of the member-company.

d. The live bird production of the member-company is processed in plants owned by a corporation which is in part owned in common with the member-company, and has a profit and loss sharing agreement with the member-company.

e. The company owned and operated a hatchery, and controlled a hatchery supply flock until 1974, when the company-owned hatchery was closed.

f. The company owns and operates the growout facilities for all its production and has no contract relationship with any other growers.

NOTES
Table G-1

g. This figure (560,000) is derived by multiplying the company's response of 700,000 square feet by .8 (square feet per bird), the standard placement ratio in the member's geographic area.

h. The member-company owns a feed mill, but also purchases feed from another corporate entity due to the small capacity of its own feed mill.

i. The company sold its company-owned grow-out facilities in 1973.

j. The company owns grow-out facilities having 95,000 head capacity; and rents facilities having 80,000 head capacity.

k. All company-owned grow-out facilities have been recently sold.

l. The member-company is organized as a cooperative owned by two cooperative members, each with a separate corporate identity. The hatchery supply flock and the hatcheries supplying the two cooperative members are owned and controlled by corporate entities which are under common ownership with the respective cooperative members.

m. See note "l" above. The two cooperative members each own and operate their own feed mills.

n. See note "l" above. Grow-out contracting for the first cooperative member is conducted by two corporate entities which are both under common ownership with the first cooperative member. The second cooperative member itself contracts with growers.

o. See note "l" above. The first cooperative member owns no grow-out facilities; the second cooperative member owns grow-out facilities with a capacity for 260,000 birds.

NOTES
Table G-1

p. See note "l" above. The member-company owns a processing plant for processing the live bird production of its cooperative members. The member-owned plant processes all of one of its cooperative member's production. Some of the live bird production of the other cooperative member is sold to an independent processor.

q. The live bird production of the member-company is processed and marketed by a corporation which is partially owned by the owners of the member-company and has a profit and loss sharing contractual arrangement with the member-company.

r. The member-company is organized as a cooperative owned by three cooperative members, each with a separate corporate identity. Each cooperative member owns and controls a grow-out contracting operation, and each is affiliated through common ownership with a separate entity owning and controlling a hatchery and hatchery supply flock. All processing and marketing is done by the member-company.

s. See note "r" above. Feed for the cooperative members of the member-company is furnished by a feed mill which is owned equally by the three cooperative members of the member-company.

t. The company formerly owned some grow-out facilities but has recently phased them out.

u. Company-owned grow-out facilities were removed from production in 1972.

v. This company is no longer in business.

w. Of the reported company-owned grow-out capacity, space for 29,000 birds is devoted entirely to resea

x. The live bird production of the member-company is processed and marketed by two corporate entities, both of which are under common ownership with the member-company.

NOTES
Table G-1

y. The live bird production of the member-company is processed by the member-company and by a wholly-owned subsidiary of the member-company.

z. Feed for the member-company's operation is manufactured in a feed mill leased from another company.

aa. Growout contracting is conducted by the member-company and by a wholly-owned subsidiary of the member-company.

NBMA SURVEY OF MEMBER-GROWER RELATIONS:
CONTRACT PROVISIONS REGARDING TITLE TO BROILERS AND
RISKS OF LOSS DURING GROW-OUT PERIOD

Table G-2
Page 1 of 6

Member	Number Growers 1973	Title and risk of loss during grow-out period		Payments to growers if—			
		Member	Grower	Flock lost: disease	Flock lost: weather	Flock lost: no neglect	Flock lost: in transport
M 2	100	X		No	Yes	Yes	Yes
M 3	13	X		Yes	No	Yes	Yes
M 4	41	X		No Ex.	No Ex.	No Ex.	Yes
M 5	100	X		No Ex.	No Ex.	No Ex.	Yes
M 6	134	X		No Ex.	No	No Ex.	Yes
M 7	76	X		No Ex.	No Ex.	No Ex.	Yes
M 8	NC	X		NC	NC	NC	NC
M 9	216	X		Yes	Yes	Yes	Yes
M 10	243	X		No Ex.	No Ex.	No Ex.	Yes
M 11	113	X		No	No	No Ex.	Yes
M 12	204	X		Yes	Yes	Yes	Yes
M 13	122	X		Yes	No	Yes	Yes
M 14	60	X		No	No	No Ex.	Yes
M 15	113	X		No Ex.	No	Yes	Yes
M 16	87	X		Yes	Yes	Yes	Yes

NBMA SURVEY OF MEMBER-GROWER RELATIONS: CONTRACT PROVISIONS REGARDING TITLE TO BROILERS AND RISKS OF LOSS DURING GROW-OUT PERIOD

Table G-2
Page 2 of 6

Member	Number Growers 1973	Title and risk of loss during grow-out period		Payments to growers if—			
		Member	Grower	Flock lost: disease	Flock lost: weather	Flock lost: no neglect	Flock lost: in transport
M 17	39	X		No Ex.	No Ex.	No Ex.	Yes
M 18	99	X		No Ex.	No	Yes	Yes
M 19	69	X		No Ex.	No Ex.	No Ex.	Yes
M 20	90	X		No Ex.	No Ex.	Yes	Yes
M 21	92	X		Yes	Yes	Yes	Yes
M 22	155	X		No Ex.	No	No Ex.	Yes
M 23	299	X		Yes	Yes	No Ex.	Yes
M 26	36	X		No	No	Yes	Yes
M 27	1447		X[a]	No[b]	No[c]	No Ex.	Yes
M 29	212	X		No Ex.	No	No Ex.	Yes
M 30	114	X		No Ex.	Yes	No Ex.	Yes
M 31	235	X		No	No	No Ex.	Yes
M 32	843	X		No	No	No Ex.	Yes
M 37	248	X		Yes[d]	No[d]	No Ex.	Yes
M 38	133	X		Yes	No	Yes	Yes

NBMA SURVEY OF MEMBER-GROWER RELATIONS: CONTRACT PROVISIONS REGARDING TITLE TO BROILERS AND RISKS OF LOSS DURING GROW-OUT PERIOD

Table G-2
Page 3 of 6

Member	Number Growers 1973	Title and risk of loss during grow-out period		Payments to growers if—			
		Member	Grower	Flock lost: disease	Flock lost: weather	Flock lost: no neglect	Flock lost: in transport
M 39	216	X		Yes	Yes	Yes	Yes
M 41	203	X		Yes[e]	No, Yes[e]	Yes[e]	Yes
M 42	582	X		No	No	No	Yes
M 44	104	X		No Ex.	No Ex.	No Ex.	Yes
M 45	93	X		No Ex.	No Ex.	Yes	Yes
M 46	222	X[f]	X[f]	No	No	No	Yes
M 47	166		X[g]	No	Yes	Yes	Yes
M 48	103	X		No Ex.	No Ex.	No Ex.	Yes
M 49	489	X		Yes	Yes	Yes	Yes
M 50	262	X		No Ex.	Yes	No Ex.	Yes
M 51	275	X		No Ex.	No Ex.	No Ex.	Yes
M 52	60	X		No Ex.	No Ex.	No Ex.	Yes
M 53	1050	X		No	No	No Ex.	Yes
M 54	80	X		No Ex.	No Ex.	No Ex.	Yes
M 55	103	X		Yes	Yes	Yes[h]	Yes

NBMA SURVEY OF MEMBER-GROWER RELATIONS:
CONTRACT PROVISIONS REGARDING TITLE TO BROILERS AND
RISKS OF LOSS DURING GROW-OUT PERIOD

Table G-2
Page 4 of 6

Member	Number Growers 1973	Title and risk of loss during grow-out period		Payments to growers if—			
		Member	Grower	Flock lost: disease	Flock lost: weather	Flock lost: no neglect	Flock lost: in transport
M 56	96	X		No Ex.	No	No Ex.	Yes
M 57	293	X		No Ex.	Yes	Yes	Yes
M 58	139	X		Yes	No	No Ex.	Yes
M 59	235	X		No	No	No Ex.	Yes
M 60	481	X		No	No	Yes	Yes
M 61	89	X		Yes	Yes	Yes	Yes
M 62	634	X		No	Yes[1]	Yes[1]	Yes
M 63	130	X		Yes	Yes	Yes	Yes
M 64	275	X		No	No	No Ex.	Yes

NOTES
Table G-2

Page 5 of 6

KEY:

NC = No Contract; Member grows all birds produced
No Ex. = No Experience

a. The member is a grower-owned cooperative whose contract arrangement establishes ownership of the birds, feed and other supplies in its grower-members.

b. Payment has been made to growers in a few cases. In 1970, about 40% of a grower's flock was condemned for air sac leukosis, and payment was made to the grower for his services and facilities with respect to the condemned birds.

c. The company (a grower-owned cooperative) carries insurance for loss of the birds in the case of fire. In some cases, the cooperative may reimburse the grower for fuel and litter costs.

d. The member-company is composed of two cooperative members, each of which has a separate corporate identity. The first cooperative member does make payments to growers who have lost a flock due to disease. The second cooperative member responded negatively to the question of whether or not payments were made to growers who had experienced disease losses. However, the second cooperative member did make payment at the contract minimum rate to one grower who lost an entire flock because of Newcastle's disease. The second cooperative member responded that it did not make payments to growers who lost flocks due to severe weather. The first cooperative member had had no experience with the problem.

e. The member-company is composed of three cooperative members, each of which has a separate corporate identi The first and the third cooperative members had had no experience with flock losses due to disease, while the second cooperative member did make payments to growers for disease-related losses. The first cooperative member did not make payments to growers for losses due to severe weather; the second cooperative member did make payments for weather-related losses. The third cooperative member had had no experience with such losses. The second cooperative member did make payments to growers when the loss of a flock was caused by no neglect on the part of the grower. The first and third cooperative members had had no experience with that type of situation.

f. According to the company's contract, the company and the grower have joint title to the birds. However, the contract provides that the company retains risk of loss of the flock during grow-out.

g. The contract of the company purports to sell chicks to the grower, but provides that the member-integrator "assumes the loss of the cost of the chicks, feed and other materials supplied" in the event of death of the birds.

h. In March, 1974, the company was ordered by the FDA to destroy a substantial portion of its live productio during grow-out because of contamination resulting fro Dieldrin-contaminated feed. Despite its total loss of all contaminated birds, the company has paid all fuel bills of the growers involved and has issued notes to the growers for payment at the contract rate should the company be successful in current litigation agains the feed ingredient dealers involved.

i. Compensation has been made in cases of tornado damage The company has had one instance in which the drug level in the feed furnished one grower was too high, resulting in a high mortality, reduced weight gains, and inefficient use of feed. Compensation was made to the grower on the basis of his normal performance on previous flocks.

NBMA SURVEY OF MEMBER - GROWER RELATIONS: MEMBERS' RESPONSIBILITIES DURING GROW-OUT PERIOD

TABLE G-3
Page 1 of 6

Member	Number of Growers 1973	Decision To Market	Supervision Of Grow-Out	Pay For Feed	Pay For Health Supplies	Supply Veterinary Services	Loading of Live Birds	Transport To Processing Plant	Supply Fuel	Supply Litter	Advise On Grower Facilitie
M 2	100	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No[a]	No[a]	Yes
M 3	13	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
M 4	41	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
M 5	100	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No[b]	No	Yes
M 6	134	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
M 7	76	Yes[c]	Yes	Yes	Yes	Yes	Yes[d]	Yes[d]	No	No	Yes
M 8	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
M 9	216	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
M 10	243	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes[e]	Yes
M 11	113	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
M 12	204	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
M 13	122	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
M 14	60	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
M 15	113	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No[f]	No	Yes
M 16	87	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
M 17	39	Yes	Yes	Yes	Yes	Yes	No[g]	Yes	No	No	No
M 18	3	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No		Yes

NBMA SURVEY OF MEMBER - GROWER RELATIONS: MEMBERS' RESPONSIBILITIES DURING GROW-OUT PERIOD

TABLE G-3
Page 2 of 6

Member	Number of Growers 1973	Decision To Market	Supervision Of Grow-Out	Pay For Feed	Pay For Health Supplies	Supply Veterinary Services	Loading of Live Birds	Transport To Processing Plant	Supply Fuel	Supply Litter	Advise On Grower Facilities
M 19	69	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No[h]	Yes
M 20	90	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes[g]	No	Yes
M 21	92	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
M 22	155	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
M 23	299	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
M 26	36	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
M 27	1447	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes
M 29	212	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
M 30	114	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No[i]	No	Yes
M 31	235	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
M 32	863	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
M 37	248	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes,No[j]	Yes,No[j]	Yes
M 38	133	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
M 39	216	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
M 41	203	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
M 42	582	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
M 44	104	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes

NBMA SURVEY OF MEMBER - GROWER RELATIONS: MEMBERS' RESPONSIBILITIES DURING GROW-OUT PERIOD

TABLE G-3
Page 3 of 6

Member	Number of Growers 1973	Decision To Market	Supervision of Grow-Out	Pay For Feed	Pay For Health Supplies	Supply Veterinary Services	Loading of Live Birds	Transport To Processing Plant	Supply Fuel	Supply Litter	Advise On Grower Facilities
M 45	93	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
M 46	222	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No[k]	No	Yes
M 47	166	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No[l]	No	Yes
M 48	103	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
M 49	489	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
M 50	262	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No[m]	No[m]	Yes
M 51	275	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
M 52	60	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No[n]	No	Yes
M 53	1050	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
M 54	80	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
M 55	103	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
M 56	96	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No[o]	Yes	Yes
M 57	293	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
M 58	139	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes[p]	Yes[p]	Yes
M 59	235	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
M 60	481	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes[q]	Yes
M 61	89	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes

NBMA SURVEY OF MEMBER - GROWER RELATIONS:

MEMBERS' RESPONSIBILITIES DURING GROW-OUT PERIOD

TABLE G-3
Page 4 of 6

Member	Number of Growers 1973	Decision To Market	Supervision Of Grow-Out	Pay For Feed	Pay For Health Supplies	Supply Veterinary Services	Loading of Live Birds	Transport To Processing Plant	Supply Fuel	Supply Litter	Advise On Grower Facilities
M 62	634	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No[f]	No	Yes
M 63	130	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
M 64	275	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes

NOTES
Table G-3

Page 5 of 6

Key:

NC = No contract; member grows all birds produced.

a. The company pays a fuel allowance of 4¢ per bird on roasters and 3¢ per bird on broilers. Approximately 10% of the company's growers have fuel and litter financed by the company at cost, with no finance charge.

b. The company pays grower all fuel costs during the winter.

c. Decision is made jointly by member and the processing entity, a separate corporation partly owned by the owner of the member-company and performing under a profit and loss sharing contract arrangement with the member.

d. The processing entity, which is partly under common ownership and shares in a profit-loss relationship with the member-company, is responsible for providing transportation, labor and equipment to move the live birds to the processing plant.

e. The company supplied litter until July, 1974.

f. The company pays fuel allowances from November tl ugh February.

g. The grower is reimbursed if his feed conversion is at an acceptable level.

h. The company has made some purchases of litter and supplied it to the growers on account.

i. Beginning November 1, 1973, the company paid a fuel allowance of .2 cent per pound.

j. The member-company is composed of two cooperative members, each of which has a separate corporate identity. The first cooperative member supplies fuel to its growers, but does not supply litter; the second cooperative member supplies litter to its growers, but does not supply fuel.

k. For two successive flocks beginning November 1, the grower receives .2 cent per pound fuel allowance.

l. The company pays a fuel allowance during the 'nter months.

NOTES
Table G-3

m. The company supplied both fuel and litter prior to August, 1973.

n. The company gives a fuel allowance of $15 per 1,000 birds for the one winter batch of birds, if a prescribed minimum temperature is maintained in the broiler houses.

o. The company pays a fuel allowance of 1¢ per bird during the winter.

p. The contract says that the grower is to furnish fuel and litter, but the company pays the grower an allowance which the member indicated will cover these costs under normal management and weather conditions.

q. Company supplies litter at one operating location. Growers must furnish their own litter under contracts in effect at two other, geographically separate, operating locations.

r. The company supplies the grower LP gas credit until the flock is sold.

s. The company pays a fuel allowance amounting to 50 per cent of he growers' fuel costs.

NMMA SURVEY OF MEMBER-GROWER RELATIONS: CONTRACT PAYMENTS BY MEMBERS TO GROWERS

TABLE G-4
Page 1 of 5

Member	Number of Growers 1973	Market Clause In Contract	Guaranteed Minimum Payment			Efficiency Differential In Payment		
			Yes / No	Current Basis		Yes / No	Contract Provision	
				Per Pound	Per Head		Low Payment	High Payment
G 2	100	No	Yes	2.0		Yes	NA	NA
G 3	13	Yes	Yes		5.0	Yes	1.90 L	2.35 L
G 4	41	Yes	Yes	1.25		No		
G 5	100	Yes	Yes	1.5		Yes	1.5 L	2.267 L
G 6	134	No	Yes	2.0		Yes	1.6 L	2.6 L
G 7	76	Yes	Yes		4.0	Yes	1.2 L	2.55 L
G 8	NC	NC	NC			NC		
G 9	216	Yes	Yes		8.5 P	Yes	8.5 H	12.5 H
G 10	243	Yes	Yes	1.0		Yes	1.0 L	2.25 L
G 11	113	No	Yes	1.5		Yes	1.5 L	2.20 L
G 12	204	Yes	Yes		7.0	Yes	2.1 L	2.8 L
G 13	122	Yes	Yes	1.5		Yes	1.5 L	2.6 L
G 14	60	Yes	Yes		5.0	Yes	1.20 L	2.55 L
G 15	113	Yes	Yes		5.0	Yes	1.25 L	2.50 L
G 16	87	Yes	Yes		4.0 P	Yes	4.0 H	6.0+ H

TABLE G-4
Page 2 of 5

NBMA SURVEY OF MEMBER-GROWER RELATIONS: CONTRACT PAYMENTS BY MEMBERS TO GROWERS

Member	Number of Growers 1973	Market Clause In Contract	Guaranteed Minimum Payment			Efficiency Differential In Payment		
			Yes / No	Current Basis		Yes / No	Contract Provision	
				Per Pound	Per Head		Low Payment	High Payment
C 17	39	No	Yes		6.0	No		
C 18	99	No	Yes	2.1		Yes	2.1 L	3.6 L
C 19	69	Yes	Yes		5.0	Yes	3.1 H	7.55 H
M 20	90	Yes	Yes	1.25		Yes	1.25 L	2.20 L
M 21	92	Yes	Yes	[a]		Yes	NA	NA
M 22	155	No	Yes	1.59		Yes	1.59 L	2.93 L
M 23	299	No	Yes	2.60		Yes	2.60 L	3.60 L
M 26	36	Yes	Yes		4.0	Yes	3.25 H	9.75 H
M 27	1447	No	Yes	2.0		Yes	2.00 L	3.00 L
M 29	212	No	Yes	1.6		Yes	1.60 L	2.30 L
M 30	114	No	Yes	1.16		Yes	1.16 L	2.65 L
M 31	235	No	Yes	2.0		Yes	2.0 L	2.75 L
M 32	843	No	Yes	2.05		Yes	2.05 L	2.50 L
M 37	248	Yes	Yes		5.0[b] 6.5[b]	Yes Yes	4.0 H 1.9 L	10.25 H[b] 2.75 L[b]
M 38	133	No	Yes	2.338	6.5 P	Yes	NA	NA
M 39	216	No	Yes	2.25		Yes	2.25 L	3.00 L

TABLE G-4
Page 3 of 5

NBMA SURVEY OF MEMBER-GROWER RELATIONS: CONTRACT PAYMENTS BY MEMBERS TO GROWERS

Member	Number of Growers 1973	Market Clause In Contract	Guaranteed Minimum Payment			Efficiency Differential In Payment		
			Yes / No	Current Basis		Yes / No	Contract Provision	
				Per Pound	Per Head		Low Payment	High Payment
M 41	203	Yes	Yes	2.17[c]		Yes	2.17[c] L	3.12[c] L
M 42	582	No	Yes	1.5/1.9[d]		Yes	1.50 L 1.90 L	2.50 L[d] 3.00 L[d]
M 44	104	Yes	Yes	1.40		Yes	1.40 L	2.60 L
M 45	93	No	Yes	1.2		Yes	1.20 L	2.475 L
M 46	222	No	Yes	1.85/2.00[e]		Yes	1.85 L 2.0 L	3.00 L[e] 3.15 L[e]
M 47	166	No	Yes	1.5/2.25[f]		Yes	1.5 L 2.25 L	2.75 L[f] 3.00 L[f]
M 48	103	Yes	Yes	1.0		Yes	1.0 L	2.50 L
M 49	489	Yes	Yes		8.5	Yes	8.5 H	U
M 50	262	No	Yes	2.0		Yes	2.0 L	2.5 L
M 51	275	No	Yes	1.9		Yes	1.9 L	2.7 L
M 52	60	No	Yes	1.61		Yes	1.61 L	2.22 L
M 53	1050	Yes	Yes	1.5		Yes	1.5 L	3.15+ L, U
M 54	80	No	Yes	1.75		Yes	1.75 L	2.25 L
M 55	103	No	Yes		4.0 P	Yes	4.0 H	U
M 56	96	No	Yes	1.5		Yes	1.5 L	3.25 L

TABLE G-4
Page 4 of 5

NBMA SURVEY OF MEMBER-GROWER RELATIONS: CONTRACT PAYMENTS BY MEMBERS TO GROWERS

Member	Number of Growers 1973	Market Clause In Contract	Guaranteed Minimum Payment			Efficiency Differential In Payment		
			Yes / No	Current Basis		Yes / No	Contract Provision	
				Per Pound	Per Head		Low Payment	High Payment
M 57	293	No	Yes		6.75 S	Yes	6.75 H	9.0 H
M 58	139	No	Yes		5.0 P	Yes	5.0 H	U
M 59	235	No	Yes	2.25		Yes	2.25 L	3.00 L
M 60	481	Yes	Yes	.75/ 1.75/1.5[g]		Yes	.75 L 1.75 L 1.5 L	2.25 L[g] 2.20 L[g] 2.15 L[g]
M 61	89	Yes	Yes		6.0 P	Yes	6.0 H	10.0 H
M 62	634	No	Yes	2.0		Yes	2.0 L	3.30 L
M 63	130	No	Yes	2.0		Yes	2.0 L	2.40 L
M 64	275	No	Yes	2.1		Yes	2.10 L	2.70 L

NOTES
Table G-4

Page 5 of 5

KEY:

H = Per head
L = Per pound
NA= Not available
NC= No Contract; member grows all birds produced
P = Birds Placed (Started)
S = Birds Sold
U = No Upper Limit

a. "Guaranteed rent" is determined by the type of facilities and equipment the grower has, and is established with each individual contract.

b. The member-company is composed of two cooperative members, each of which has a separate corporate identity. The two cooperative members have different contracts, and their payment provisions are different.

c. The member-company is composed of three cooperative members, each of which has a separate corporate identity. The three cooperative members have different contracts and their payment provisions are different. The figures given here represent averages of the three cooperative members' payment provisions. The actual low and high payments of the three cooperative members are as follows: first, 2.20 - 2.80; second, 2.30 - 2.80; and third, 2.0 - 3.75.

d. The company has two contracts in force, one for each of its two geographically separate operations.

e. Growers not on probation (those Class "A" growers who follow company's recommended program) receive 2¢ minimum, growers on probation for not following program receive 1.85¢ minimum.

f. The company has two contracts, one for unimproved and one for improved housing.

g. The company has operations in three separate geographic areas, and uses a different contract for each location.

INVESTMENT COSTS OF REPRESENTATIVE SMALL TO LARGE GROWERS AND PERCENTAGES OF COSTS TO GROWER RECEIPTS, 1974

Table G-5
1 of 2

Grower	William T. O'Neal	Kirk H. Davis	J. Troy Copeland	Albert B. Maddox	Maurice B. Layton	Thomas W. Sparks	
Year	1974	1974	1974	1974	1974	1974	
Receipts	$8,437.56	$21,541.00	$55,055.77	$13,225.08[a]	$10,500.00	$14,573.14[g]	
Costs other than own labor	3,211.75[c,d] 38%	10,002.65[d] 46%	35,374.19[e,f] 64%	4,910.00[b,d] 37%	3,462.00[b,d] 33%	13,028.09[b,e] 87%	60%
Investments costs (insurance, maintenance, depreciation)	2,031.00 24%	5,489.26 25%	13,113.38 24%	3,330.00 25%	2,142.00 20%	6,160.14 42%	28%
Depreciation only	767.00 21%	4,638.06 22%	9,680,75 18%	2,430.04 18%	800.00 8%	3,452.00 24%	16%
Service-life used for depreciation: Years-Houses/Equipment	15/15	10/8	15/15,8	10/8	10/20	10/10	

a. Payment reflects minimum payment of 6.5 cents per bird on one flock totally destroyed because of Dieldrin contamination.
b. Litter furnished by integrator.
c. No litter expense included, because grower considered fertilizer value of litter more than offset litter-related costs.
d. No substantial hired labor costs.
e. Substantial hired labor costs - all labor in growout performed by hired labor.
f. Shavings (litter) expense included. All litter used as fertilizer on grower's pasture; however, grower unable to calculate or estimate market value of fertilizer for comparison with litter-related costs.
g. Thomas W. Sparks' receipts for 1973 were $21,658.46; for 1973, all ratios would thereby be reduced by one-third, as indicated in the margin.

Table G-5
2 of 2

INVESTMENT COSTS OF REPRESENTATIVE SMALL TO LARGE GROWERS AND PERCENTAGES OF COSTS TO GROWER RECEIPTS, 1974

Grower	Leroy E. Mayfield	James Martin	Ford Barrett
Year	1974	1974	1974
Receipts	$6,925.84	$6,617.00	$12,171.01
Costs other than own labor	3,365.09 49%	5,578.00 83%	7,442.57 61%
Investments costs (insurance, maintenance, depreciation)	1,555.18 22%	2,735.00 41%	2,862.57 24%
Depreciation only	1,129.56 16%	1,801.00 27%	1,830.07 15%
Service - life used for depreciation: Years - Houses/Equipment	15/4-10	10-15/2-15	10/

a. Includes $345 for litter; used litter reported to have fertilizer value of $3,800.00
b. Includes $204 paid for spreading litter on fields, charged in expenses to "Cleaning houses." Excluded from Costs is a charge of $120 for Interest.

NBMA SURVEY OF MEMBER-GROWER RELATIONS: LIVE BIRD PRODUCTION COSTS: PERCENTAGE DISTRIBUTION

TABLE G-6
Page 1 of 5

Member	Number of Growers 1973	Data Year	Payments to Growers	All Other Live Bird Costs	Cost of Chicks	Cost of Feeds
M 2	100	1973	10	90	10	75
M 3	13	1973	9.38	90.62	16.40	64.84
M 4	41	1973	8.33	91.67	12.67	69.73
M 5	100	1973	6.28	93.72	11.30	74.94
M 6	134	1971	16.0	84.0	17.0	60.0
M 7	76	1973	8.88	91.12	12.08	79.01[a]
M 8	NC	NC	NC	NC	NC	NC
M 9	216	1973	11.0	89.0	11.0	69.0
M 10	243	1973	8.5	91.5	9.6	76.4
M 11	113	1973	9.0	91.0	15.0	74.5
M 12	204	1973	10.8	89.2	11.3	73.4
M 13	122	1973	12.0	88.0	14.0	70.0
M 14	60	1973	8.28	91.72	12.12	79.56
M 15	113	1973	8.929	91.071	11.125	75.799
M 16	87	1973	10.49	89.51	13.78	66.72
M 17	39	1973	4.4	95.6	12.8	81.7[b]

NBMA SURVEY OF MEMBER-GROWER RELATIONS: LIVE BIRD PRODUCTION COSTS: PERCENTAGE DISTRIBUTION

TABLE G-6
Page 2 of 5

Member	Number of Growers 1973	Data Year	Payments to Growers	All Other Live Bird Costs	Cost of Chicks	Cost of Feeds
M 18	99	1972	14.39	85.61	15.88	63.25
M 19	69	1973	9.57	90.43	13.0	75.35
M 20	90	1973	7.95	92.05	[c]	85.66[c]
M 21	92	1973	10.50	89.50	11.00	73.37
M 22	155	1973-74	9.48[d]	90.52	10.57	74.35
M 23	299	1973	11.2	88.8	10.7	71.0
M 26	36	1973-74	5.14	94.86	14.14	75.67
M 27[e]	1447	1973	11.24	88.76	12.47	66.93
M 29	212	1973	7.8	92.2	13.5	72.3
M 30	114	1973	11.5	88.5	11.45	69.86
M 31	235	1973	12.0	88.0	11.85	68.0
M 32	843	1973	11.6	88.4	12.2	71.7
M 37[f]	248	1973	10.14	89.86	12.64	70.27
M 38	133	1973	12.8	87.2	11.9	63.9
M 39	216	1973	9.88	90.12	13.76	70.50
M 41[g]	203	1973	11.40	88.60	11.51	70.91

NBMA SURVEY OF MEMBER-GROWER RELATIONS: LIVE BIRD PRODUCTION COSTS: PERCENTAGE DISTRIBUTION

TABLE G-6
Page 3 of 5

Member	Number of Growers 1973	Data Year	Payments to Growers	All Other Live Bird Costs	Cost of Chicks	Cost of Feeds
M 42	582	1973	8.94	91.06	12.83	71.03
M 44	104	1973-74	9.51	90.49	9.91	76.51
M 45	93	1973	5.9	94.1	6.3	71.4
M 46	222	1973	12.57	87.43	12.74	70.80
M 47	166	1973-74	10.32	89.68	12.67	66.80
M 48	103	1973	9.11	90.89	12.05	74.71
M 49	489	1973	9.1	90.9	11.8	72.3
M 50	262	1973-74	10	90	14	71
M 51	275	1973	9.99	90.01	10.90	72.89
M 52	60	1973-74	8	92	10	74
M 53	1050	1973	11.32	88.68	13.38	68.57
M 54	80	1973	10.6	89.4	16.4	66.0
M 55	103	1972	13.416	86.584	16.765	65.209
M 56	96	1973-74	7.8	92.2	11.0	77.0
M 57	293	1973	10.4	89.6	9.8	77.0
M 58	139	1973	10.3	89.7	11.1	70.9

NBMA SURVEY OF MEMBER-GROWER RELATIONS: LIVE BIRD PRODUCTION COSTS: PERCENTAGE DISTRIBUTION

TABLE G-6
Page 4 of 5

Member	Number of Growers 1973	Data Year	Payments to Growers	All Other Live Bird Costs	Cost of Chicks	Cost of Feeds
M 59	235	1973	11.6	88.4	12.0	71.0
M 60	481	1973	8.13	91.87	14.95	70.41
M 61	89	1973	9.0	91.0	11.0	75.0
M 62	634	1973	9.85	90.15	11.40	72.56
M 63	130	1973	10.97	89.03	14.23	71.12
M 64	275	1973-74	10.6	89.4	12.0	69.8

NOTES
Table G-6

Page 5 of 5

KEY

NC - No contract; member grows all birds produced.

a. Includes cost of supervision of grower operations.

b. Includes cost of all vaccines, medicines and other health supplies.

c. Includes cost of chicks and all feeds.

d. Does not include patronage refund since none was made in 1973.

e. The company is a grower-owned cooperative with operations in seven separate geographic areas. The figures given for this company are unweighted averages of the figures submitted separately by each one of the seven operating units.

f. The member-company is composed of two cooperative members, each of which has a separate corporate identity. The figures given here for the member company are unweighted averages of the figures submitted separately by the two cooperative members.

g. The member-company is composed of three cooperative members, each of which has a separate corporate identity. The figures given here for the member company are unweighted averages of the figures submitted separately by the three cooperative members.

NBMA SURVEY OF MEMBER-GROWER RELATIONS:
TENURE IN MEMBER-GROWER RELATIONS, EFFICIENCY FACTORS, AND COMPETITION FOR GROWERS: 1973

Table G-7
Page 1 of 8

Member	Number Growers 1973	Tenure Arrangements				Efficiency Factors Affecting			Competition for Growers			
		Contract Provisions		Informal Assurances								
		Option to Renew	Conditions	Yes / No	Conditions	Tenure	Contract Payments	Measures	Existence of	Number Competitors	Growers Gained/ Lost Since 1970 Gained	Lost
M 2	100	No		Yes		Yes	No	FC	Yes	2	40	NA
M 3	13	No		Yes	a	No	Yes	FC	No	0	0	0
M 4	41	No		Yes		Yes	No	NA	Yes	2	13	5
M 5	100	Yes	b	Yes	b	Yes	Yes	FC	Yes	4	7-10^b	3-4^b
M 6	134	Yes	c	Yes		Yes	Yes	CP	No	0	0	0
M 7	76	No		Yes		Yes	Yes	FC	No	0	0	3
M 8	NC	NC		NC		NC	NC	NC	NC	NC	NC	NC
M 9	216	Yes	d	Yes	d	Yes	Yes	CP	Yes	5	NA	32
M 10	243	Yes	gg	Yes		Yes	Yes	FC	Yes	6	NA	9
M 11	113	No		Yes		Yes	Yes	FC	No	0	0	0
M 12	204	Yes	e	No		Yes	Yes	FC,CP	Yes	4	59	22
M 13	122	Yes	f	Yes		Yes	Yes	FC	Yes	7	12	11
M 14	60	No		Yes		No	Yes	FC	No	0	12-15	0
M 15	113	No		Yes		Yes	Yes	FC	Yes	9	NA	NA
M 16	87	Yes	g	Yes		Yes	Yes	FC	Yes	6	8	0
M 1	39	Yes	f			No	Yes	FC	Yes	1	9	2

NBMA SURVEY OF MEMBER-GROWER RELATIONS:
TENURE IN MEMBER-GROWER RELATIONS, EFFICIENCY FACTORS, AND COMPETITION FOR GROWERS: 1973

Table G-7
Page 2 of 8

Member	Number Growers 1973	Tenure Arrangements				Efficiency Factors Affecting			Competition for Growers			
		Contract Provisions		Informal Assurances		Tenure	Contract Payments	Measures	Existence of	Number Competitors	Growers Gained/ Lost Since 1970	
		Option to Renew	Conditions	Yes / No	Conditions						Gained	Lost
M 18	99	Yes	h	Yes	h	Yes	Yes	FC	No	0	0	0
M 19	69	No		Yes		No	Yes	CP	Yes	4	22	15
M 20	90	Yes	i	Yes		Yes	Yes	FC	No[j]		15-20[j]	0
M 21	92	Yes	f	Yes	k	Yes	Yes	CP	Yes	4	NA	NA
M 22	155	No	l	Yes	l	Yes	Yes	FC	Yes	10	31	15
M 23	299	No	m	Yes	n	Yes	Yes	CP	Yes	6	25	35
M 26	36	Yes	o	Yes		Yes	Yes	FC	Yes	4	NA	NA
M 27	1447	No		Yes	p	Yes	Yes	CP	Yes	33	202	246
M 29	212	Yes	f	Yes		Yes	Yes	CP	Yes	5	NA	NA
M 30	114	Yes	q	Yes		Yes	Yes	FC	No		0	0
M 31	235	Yes	r	No		No	Yes	CP	Yes	6	40[s]	5[s]
M 32	843	No		Yes	t		Yes	FC	Yes	8	72	45
M 37	248	No		Yes		Yes	Yes	CP	Yes	13	30	9
M 38	133	No		Yes		No	Yes	FC	Yes	2	3	2
M 39	216	No		No		No	Yes	CP	Yes	4	73	29

NBMA SURVEY OF MEMBER-GROWER RELATIONS:
TENURE IN MEMBER-GROWER RELATIONS, EFFICIENCY FACTORS, AND COMPETITION FOR GROWERS: 1973

Table G-7
Page 3 of 8

Member	Number Growers 1973	Tenure Arrangements				Efficiency Factors Affecting			Competition for Growers			
		Contract Provisions		Informal Assurances		Tenure	Contract Payments	Measures	Existence of	Number Competitors	Growers Gained/ Lost Since 1970	
		Option to Renew	Conditions	Yes / No	Conditions						Gained	Lost
M 41	203	Yes	u	Yes	u	Yes	Yes	FC	Yes	18	81	9[v]
M 42	582	Yes	w	Yes		Yes	Yes	CP	Yes	6	175	53
M 44	104	No		No		No	Yes	FC	Yes	9	100	6
M 45	93	No		No		No	Yes	FC[x]	Yes	5	94	31
M 46	222	No		Yes		Yes	Yes	CP	Yes	5	21	22
M 47	166	Yes	f	Yes		Yes	Yes	CP	Yes	4	16	13
M 48	103	No		No		No	Yes	FC	Yes	2	5	0
M 49	489	Yes	y	Yes		Yes	Yes	CP	Yes	10	225	20
M 50	262	No		Yes	z	Yes	Yes	CP	Yes	3	0	26
M 51	275	Yes	aa	Yes	aa	Yes	Yes	CP	Yes	4	NA	NA
M 52	60	Yes	f	No		No	Yes	FC	Yes	2	100	20
M 53	1050	Yes	bb	Yes		Yes	Yes	CP	Yes	11	140	140
M 54	80	No	cc	Yes		Yes	Yes	FC	No	0	0	0
M 55	103	No	dd	No	dd	Yes	Yes	FC	Yes	2	21	12
M 56	96	No		Yes		No	Yes	FC	Yes	4	5	11

NBMA SURVEY OF MEMBER-GROWER RELATIONS:
TENURE IN MEMBER-GROWER RELATIONS, EFFICIENCY FACTORS, AND COMPETITION FOR GROWERS: 1973

Table G-7
Page 4 of 8

Member	Number Growers 1973	Tenure Arrangements				Efficiency Factors Affecting			Competition for Growers			
		Contract Provisions		Informal Assurances							Growers Gained/ Lost Since 1970	
		Option to Renew	Conditions	Yes / No	Conditions	Tenure	Contract Payments	Measures	Existence of	Number Competitors	Gained	Lost
M 57	293	Yes	ee	Yes	ee	Yes	Yes	CP	Yes	4	40	7
M 58	139	Yes	f	Yes		Yes	Yes	CP	Yes	4	23	15
M 59	235	Yes	f	Yes		Yes	Yes	CP	Yes	2	7	1
M 60	481	No	ff	Yes		No	Yes	FC	Yes	6	48	43
M 61	89	No		Yes		Yes	Yes	CP	Yes	3	22	9
M 62	634	Yes	f	Yes		Yes	Yes	CP	Yes	3	NA	NA
M 63	130	No		Yes		Yes	Yes	FC	Yes	1	60	30
M 64	275	Yes		No		Yes	Yes	CP	Yes	5	9	9

NOTES
Table G-7

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KEY:

CP = Cost of Production
FC = Feed Conversion
NA = Not Available
NC = No Contract; Member grows all birds produced

a. As long as company is placing broilers.

b. Contract remains in force unless grower notifies the company one week before sale of flock, or unless the company notifies grower one week after the sale.

The figures for "Growers Gained/Lost" are for 1973 only.

c. Continuous contract until terminated by either the grower or the company by giving thirty days' notice.

d. Remains in force as long as mutually agreeable to the company and grower. "New house construction" contracts guarantee a minimum of twenty flocks.

e. Continuous contract until terminated by either the grower or the company. Contract expresses intention for grower to complete nine flocks every two years.

f. Continuous contract until terminated by either the grower or the company.

g. Contract remains in effect for successive batches of broilers, but may be cancelled because of poor grower performance.

h. Contract for "five batches per year, provided (the company) is not forced to cut back production due to economic situations beyond (its) control. Contract further provides that if grower fails to maintain company average feed conversion for "two broods in

NOTES
Table G-7

four," contract may be terminated or company may put in replacement flocks at its discretion.

i. Continous contract. Payment rates may change according to economic conditions and market price.

j. The competition (six different companies) went out of business in the last two years, in bankruptcy or nearly so.

k. Contract recites that company is "more than glad to pay bonuses to top growers," but that "growers in the bottom bracket cost so much, it might mean that we will have to drop them."

l. Contract relationship lasts for at least two flocks. Grower may be terminated thereafter if his efficiency "falls in the lowest 25% of weekly settlements for two consecutive flocks, or three out of five flocks."

m. Contract specifies the delivery of replacement flocks from time to time subject to provision for termination by either party upon 30 days notice.

n. Growers are informally assured of replacement flocks as long as the company places flocks in the area.

o. Contract recites that it is "self-renewing," and provides for termination only in the event of breach.

p. Assured verbally that the company will continue to place flocks with growers unless they remain consistently in the bottom efficiency bracket.

q. Continuous contract unless terminated by either the grower or the company between batches.

r. Continuous replacement subject to general provisions for termination upon occurrence of specified events of default.

s. Since January 1, 1972.

NOTES
Table G-7

t. If grower is below average, based on cost, for three flocks, he is put on probation for one flock, then dropped if performance on probated flock falls below average.

u. The member-company is composed of three cooperative members, each of which has a separate corporate identity. The contract of the first cooperative member is written for a single flock, but the member reported that the grower has an option to renew if his performance is satisfactory. The contract of the second cooperative member is for a five-year term, renewable after that from year to year by mutual agreement. The contract of the third cooperative member continues for seven years, after which it is renewable from year to year by mutual agreement. All three cooperative members stated that growers with satisfactory performance are assured of continued placements as long as the integrators are in business.

v. The member-company is composed of three cooperative members, each of which has a separate corporate identity. The first cooperative member had no information available for "Growers lost since 1970." The figure given is for the other two cooperative members.

w. New House Contract guarantees four batches per year.

x. A bonus is also paid to grower based on cost of production.

y. Continuous contract until terminated by the grower or the company. New House Contracts guarantee regular placements for twenty flocks.

z. If grower remains in lowest quartile consistently, the contract advises that he will be dropped.

NOTES
Table C-7

Page 8 of 8

aa. Continuous contract until terminated by either the grower or the company. Grower is informally assured that as long as grower performs efficiently, he will continue to have birds placed with him.

bb. Contract is for one batch only, but is automatically renewed until cancelled by either the grower or the company.

cc. Contract for Environmental Control Houses covers twenty-five batches.

dd. Although the contract is written for a single flock, it provides that "any grower...in the lower 20% of their weekly selling group two times within any one year is subject to termination...".

ee. Contract is continuous, but may be terminated for "continuing poor performance and for non-compliance with company programs." The provision as applied means that a grower may be terminated if he is "in the lower 30% for three out of four batches."

ff. Contracts in use at two operating locations are automatically renewable. The contract used at the third operating location in a different geographic area is for one batch only.

gg. Contract automatically renews for successive flocks unless cancelled by either party after any flock. Contract sets out standards governing the company's decision in renewing, and in the timing of placement of renewal flocks, relating to insulation and equipment in houses and the individual grower's efficiency ranking among the company's growers.

NBMA SURVEY OF MEMBER-GROWER RELATIONS: ORDER OF PRIORITIES IN PROCEDURES FOR REDUCING CHICK PLACEMENTS TO ADJUST TO MARKET DEMAND

TABLE C-8
Page 1 of 5

Member	Number of Growers 1973	Extending Replacement Period	Skipping at Growers Option	Reducing Birds Per House	Reducing Replacements For Some	Terminating Some Growers	Other Methods
M 2	100	NA	NA	NA	NA	NA	
M 3	13	3	1	2	5	4	
M 4	41	1					
M 5	100	1					
M 6	134	1		1			
M 7	76	1					
M 8	NC	NC	NC	NC	NC	NC	
M 9	216	1					
M 10	243	1					
M 11	113		1				
M 12	204	1					
M 13	122	1					
M 14	60	1					
M 15	113	2	1			3	
M 16	87	1					

NBMA SURVEY OF MEMBER-GROWER RELATIONS: ORDER OF PRIORITIES IN PROCEDURES FOR REDUCING CHICK PLACEMENTS TO ADJUST TO MARKET DEMAND

TABLE G-8
Page 2 of 5

Member	Number of Growers 1973	Extending Replacement Period	Skipping at Growers Option	Reducing Birds Per House	Reducing Replacements For Some	Terminating Some Growers	Other Methods
M 17	39	1	2			3	
M 18	99	2	1				
M 19	69	1					
M 20	90	1	2	3	5	4	6[a]
M 21	92	2	3	4		1	
M 22	155	1	2		4	3	
M 23	299	1	3		2		
M 26	36	1		1			
M 27	1447	1	2	4		3	5[b]
M 29	212	1	2			3	
M 30	114	1					
M 31	235	1	2				
M 32	843	1	2				
M 37	248	2	1	3		4	
M 38	133	1					

NBMA SURVEY OF MEMBER-GROWER RELATIONS: ORDER OF PRIORITIES IN PROCEDURES FOR REDUCING CHICK PLACEMENTS TO ADJUST TO MARKET DEMAND

TABLE G-8
Page 3 of 5

Member	Number of Growers 1973	Extending Replacement Period	Skipping at Growers Option	Reducing Birds Per House	Reducing Replacements For Some	Terminating Some Growers	Other Methods
M 39	216	1					
M 41	203	1					
M 42	582	1	3	2			
M 44	104	2	1	5	3	4	
M 45	93	1		2		2	
M 46	222	1	2				
M 47	166	2	1		3		
M 48	103	1					
M 49	489	1				2	
M 50	262	1	2				
M 51	275	1					
M 52	60	1					
M 53	1050	1	2		4	3	
M 54	80		1				
M 55	103	1		2		3	

NBMA SURVEY OF MEMBER-GROWER RELATIONS: ORDER OF PRIORITIES IN PROCEDURES FOR REDUCING CHICK PLACEMENTS TO ADJUST TO MARKET DEMAND

TABLE G-8
Page 4 of 5

Member	Number of Growers 1973	Extending Replacement Period	Skipping at Growers Option	Reducing Birds Per House	Reducing Replacements For Some	Terminating Some Growers	Other Methods
M 56	96	1					
M 57	293	1	2				
M 58	139	1	2				
M 59	235	1					
M 60	481	1	1				
M 61	89	1					
M 62	634	1					
M 63	130	1	2			2	
M 64	275	1					

NOTES
Table G-8

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KEY:

NA = Not Available.
NC = No Contract; member grows all birds produced

a. No explanation of the "other method" was given.

b. One out of the company's seven operating units reported skipping one cycle with 10% of those growers who had the highest costs.

In the United States District Court for the
Northern District of Georgia
Atlanta Division

(Title omitted in printing)

AFFIDAVIT OF FORD BARRETT

(Filed May 1, 1975)

State of Georgia
County of Forsyth

I, Ford Barrett, after first being duly sworn, on oath depose and say:

1

I make this affidavit for use by National Broiler Marketing Association in support of its Motion for Summary Judgment made in this action.

2

I know of my own personal knowledge the facts stated in this affidavit.

3

My residence is Route 3, Cumming, Georgia 30130.

4

I started raising chickens about 35 years ago. I started out raising chickens on my own, without any contract. I had small houses then and a feed dealer would sell me feed and chicks. The feed dealer would also market my chickens; I have never tried to market chickens on my own. If the chickens did not

bring enough to pay my bills at the feed dealer, I would end up paying him out of my pocket.

5

When I was raising my own chickens, I made a little money overall, but I also lost money at times.

6

I have been a contract grower of chickens for about 21 years. When I started as a contract grower, I was paid 2 cents per pound regardless of what the market price was. I also received a portion of any proceeds that were left after the feed dealer recovered his costs plus a margin of profit.

7

All of the integrated producers or feed dealers I have grown for have guaranteed me a flat rate per pound.

8

I have been a grower for several different feed dealers or integrated producers over the past 21 years, largely because they kept going broke. I first was a contract grower for someone named Martin. He went broke. The second person I grew for was Frank Vaughan. He went broke. The third was Clyde Pendley. He went broke too. The fourth was Ralton Purina Company. It didn't go broke, but it got out of the chicken business.

9

I have never had any trouble getting new flocks to grow-out—even when the integrated producers I grew for went out of business.

10

I have grown for A. C. Smith Poultry Company for the last 9 years. I have never had any trouble getting chicks and I enjoy growing with A. C. Smith. Pillsbury came out here looking for contract growers, but I wouldn't switch from A. C. Smith. I have had no cross words in 9 years with A. C. Smith or his people.

11

A. C. Smith guarantees me 2 cents per pound. If the broiler market is high and if my feed conversion is all right, I get more than 2 cents per pound. Two cents per pound more than pays my costs. My wife and I make a good living on 2 cents per pound.

12

Eighteen years ago, I had 2 chicken houses, with capacities of 5,000 and 3,000 birds respectively. I still use the 5,000 bird house and I now have 3 newer houses, which I built approximately 11 years ago. Two of the 11 year old houses have 10,000 bird capacities and 1 has a 6,800 bird capacity. The individual capacities are approximations; my maximum total capacity for my 4 houses is 33,000 birds. A. C. Smith places chicks in all 4 houses at the same time.

13

Ralston Purina Company convinced me, when I was still growing for them, to increase my capacity by building the 3 new houses.

14

I estimate that the 3 houses constructed 11 years ago cost approximately $25,000.00 to build and to equip.

15

I borrowed the money to build those 3 houses from the Federal Land Bank. I borrowed more money from the Production Credit Association to insulate the houses. Then I borrowed from a bank for 1 automatic feeder and from the Federal Land Bank for another. I paid off all of these loans completely over a 10 year period.

16

I own a total of 7 acres of land, 5 of which are devoted to growing broilers.

17

I settle an average of 4 and ½ flocks per year, and I have settled 5 flocks each year for the last 2 years.

18

A. C. Smith is good about putting the flocks back into my houses. There is a maximum of about 3 weeks between flocks, but the period between flocks actually averages out to about 10 days to 2 weeks generally.

19

A. C. Smith is the one who takes the big risk. A. C. Smith Company has the big investment—the Company has money invested in the birds, the feed, the medicine, the trucks and other facilities and equipment, and they're the ones who will lose if the chickens smother or die from disease.

20

I am all paid out on my capital investment. I am not going to lose nearly as much as A. C. Smith. All I would lose would be the value of my work and my out-of-pocket fuel costs should a flock die. A. C. Smith would be the big loser, not me; he is putting more dollars into my growout operation than I am. He has got a lot of money tied up, just in the price of feed and chickens for example.

21

A. C. Smith has made for me what I have. Without A. C. Smith or other integrated producers, I simply could not be in the chicken business. A. C. Smith has been a good friend. He has had bad times and lost lots of money, but he has always paid me my guaranteed contract payment. A. C. Smith Company continued placing chickens with me when the chickens were bringing 9 cents per pound farm level; 9 cents per pound, and yet he was still paying me 2 cents per pound. If anyone is going to lose something in the grow-out phase, A. C. Smith is the one who is going to lose it.

22

A. C. Smith has the biggest costs. He pays for the chicks, the feed, the feed and cooping trucks, the medicine and his employees who supervise the grow-out operation. He's the one with the overhead expense. A. C. Smith even pays for the catching and cooping of the birds. I have nothing to do with catching and cooping the chickens.

23

From December through mid-May, A. C. Smith helps pay my heating or fuel costs. He paid me close to $800.00 for fuel for the last two flocks. This fuel allowance is over and above my guaranteed payment and any additional market and efficiency payments.

24

The loans on my chicken houses had 20 year terms. I paid them out in 10 years, plus bought some land, a new car, a new pick-up or two, and my family and I have had plenty to eat. A. C. Smith keeps chickens in our houses and, if the price drops, he loses. If the price goes up, I win.

25

My capital investment is paid out and my houses are insured. My only risk in growing chickens is the value of my labor plus that portion of my fuel costs not reimbursed by A. C. Smith. I hire very little labor, and I wouldn't count the cost as significant at all.

26

In 1973, I settled 5 flocks with A. C. Smith, and I received gross payments totalling $12,270.61.

27

In 1974, I settled 5 flocks with A. C. Smith and I received gross payments totalling $12,171.01.

28

My 1974 expenses in connection with my broiler growing operation were as follows:

Item	**Annual Cost**
Fuel	$3,540.00
Electricity	240.00
Insurance	440.00
House and equipment upkeep and maintenance	592.50
Hired labor	180.00
Shavings (litter)	620.00
Taxes	270.65

All water expenses are included in the electricity expense. The tax figure includes property taxes and ad valorem taxes.

The shavings expense shown above is partly recovered when the litter and shavings are removed from my houses. Because the litter and shavings are valuable as fertilizer, people remove them from my houses at no cost to me, simply to get the fertilizer. I therefore view the shavings expense shown above as being partially offset by my avoiding entirely the expense and labor which would otherwise be required to remove the shavings and litter.

29

For tax and bookkeeping purposes, my broiler houses are totally depreciated. My 3 newer houses were depreciated out over 10 years at a rate of $4,000 per year per house. I have from time to time had to replace equipment used in my houses, such as side curtains and automatic feeders. This equipment is depreciated on a straight line basis over varying lengths of time, depending on the type of equipment. My total depreciation expense for 1974 was $1,830.07.

/s/ FORD BARRETT

Sworn to and subscribed before me this 21 day of April, 1975.

MARY CASTLEBERRY
Notary Public

Notary Public State of Georgia, Forsyth County

My term expires 8-10-76

In the United Statees District Court for the
Northern District of Georgia
Atlanta Division

(Title omitted in printing)

AFFIDAVIT OF J. TROY COPELAND

(Filed May 1, 1975)

State of Georgia
County of Habersham

I, J. Troy Copeland, after first being duly sworn, on oath depose and say:

1

I make this affidavit for use by National Broiler Marketing Association in support of its Motion for Summary Judgment made in this action.

2

I know of my own personal knowledge the facts stated in this affidavit.

3

My residence is Route 2, Clarkesville, Georgia 30523.

4

I first got in the chicken business in 1942 or 1943. I started out buying chickens and trying to market them myself. Sometimes I could sell them, and sometimes I couldn't.

5

Some time in the mid 1940's, I began growing chickens on contract for Jesse Jewell. I do not recall the details of my relationship with Jewell.

6

After the second World War, I began growing for Tom and Lee Arrendale, then operating as Arrendale's Feed Store. It is my recollection that growers were on their own as far as the risk was concerned, and the Arrendales sold us feed and chicks and would try to find a market for us. At that time there was no guarantee of any payment or market.

7

In 1951, I went completely on my own again, producing and marketing chickens myself. I only did that for about a year, and I realized that I just couldn't do it on my own.

8

Trying to do it without a contract program, you get everything you own tied up into it, and then watch it fall apart. The chickens could get a cold, or get sick in some way, and it was possible to lose them all. Furthermore, it wasn't an everyday business, since it took about 9 weeks or so to raise the chickens and you could only come to market once every 9 weeks. Sometimes you could make something, sometimes you couldn't.

9

After a year of trying it on my own, I started back growing on contract with the Arrendales. In about 1952, the Arrendales began guaranteeing a payment of $60 per 1,000 birds sold.

10

I have been growing on contract ever since then with the Arrendales, whose integrated broiler operation is now owned and operated as Fieldale Corporation.

11

I now have 6 broiler houses, with a total capacity of 106,000 birds per cycle. Two of the houses were built in 1963, two in 1964 and two in 1966.

12

Construction and equipping of all my houses were financed through the Bank of Habersham, where Tom Arrendale is Chairman of the Board.

13

All of my houses were built by contractors. I had to borrow approximately $98,000 to construct and equip the 6 houses, and I borrowed all of it from the Habersham Bank. Tom Arrendale just told me to come to the bank, the money was ready for me.

14

My houses are situated in two separate locations. One location has three houses with a combined capacity of 50,000 chickens, and the other location has three houses with a total capacity of 56,000.

15

My family and I provide all the labor for the growout operation at one location, and I have a hired couple looking after the other location. I furnish the hired couple a dwelling house and $80 per week salary.

16

My total farm covers 237 acres. Of that, 5 acres would take care of all the broiler growing operation. Except for 50 acres planted in commercial timber, the rest of my acreage is in pasture.

17

I also raise angus beef cattle, and I currently have 158 head. I have to buy everything that goes into the cattle raising, and I take all of the risk involved in producing and marketing the cattle.

18

I sell my cattle at auction, and I haven't been making any money off of them. It requires a herd of about 400 head before you can begin to make any money.

19

I have made money on just about every flock of chickens I have grown for the Arrendales, and I have never lost money on any flock.

20

I feel sure I will get replacement chickens so long as Fieldale is in business. I have been associated with the Arrendales for about 25 years, and I have always gotten chickens on a regular basis. For the past 4 or 5 years, I have settled 5 flocks every year.

21

The minimum 2.60 cents per pound guaranteed by Fieldale would be adequate to cover out-of-pocket costs, labor and some profit. I have always made a good bit more than the minimum payment, however.

22

Fieldale bears the major risk in connection with the broiler growout, because they own the chickens and the feed. The only thing I risk might be my labor.

23

I could not have stayed in broiler production if the Arrendales had not started their contract program with the guaranteed payment. Without the program, I couldn't have gotten my money back out, and I doubt that the Arrendales could have gotten the growing houses built back in the 1950's if they hadn't been guaranteeing payments.

24

In 1974, I settled 5 flocks out of both locations, for a total gross payment of $55,055.77.

25

My estimated operating expenses for 1974 were as follows:

Item	**Annual Cost**
Fuel	$11,878.70
Electricity	2,922.11
Hired labor	4,160.00
Insurance	1,432.63
Shavings	3,300.00
Building and equipment upkeep and maintenance	2,000.00
Taxes	2,427.44

All water expense is included in the electricity expense.

The shavings expense is offset in large part by the fact that I use all of the chicken manure and litter on my pasture as fertilizer.

Total repair and maintenance expense for my entire farm during 1974 was $2,417.81 and I estimate that about $2,000.00 of that was attributable to the broiler growing operation.

The tax expense shown above is the total amount of tax I paid in 1974 attributable to my farm income, including cattle production and property tax on 237 acres, of which no more than 5 acres is devoted to broiler growing.

26

For tax and bookkeeping purposes, I am depreciating all 6 of my chicken houses, and the equipment in 4 of them, over a period of 15 years on the straight line method. I am depreciating the equipment in the other 2 chicken houses over a period of 8 years on the straight line method. The total depreciation expense for these assets in 1974 was $9,680.75.

/s/ J. TROY COPELAND

Sworn to and subscribed before me this 8th day of April, 1975.

/s/ BAYARD M. ROPER, JR.
Notary Public

My Term Expires July 7, 1977.

In the United States District Court
For the Northern District of Georgia
Atlanta Division

(Title omitted in printing)

AFFIDAVIT OF KIRK H. DAVIS

(Filed May 1, 1975)

State of Georgia
County of Habersham

I, Kirk H. Davis, after first being duly sworn, on oath depose and say:

1

I make this affidavit for use by National Broiler Marketing Association in support of its Motion for Summary Judgment made in this action.

2

I know of my own personal knowledge the facts stated in this affidavit.

3

My residence is Route 1, Clarkesville, Georgia 30523.

4

I have been growing broiler chickens since 1954 on contract with Tom and Lee Arrendale and what is now Fieldale Corporation.

5

I built my first broiler house in 1954 on my mother's farm. The house was built from timber cut on the farm. It was an open house with curtained windows, and had a capacity of 8,000 birds. I installed a running water system in the house, rechanneling water from a spring on the land. Arrendale Feed Store sent some of their people up to help install the water system, and also to install the oil pipes which supplied oil to the oil brooders (heaters).

6

Tom Arrendale also selected and purchased the brooders and the feeding equipment for me. and I paid him back sometime later.

7

The total cost of the original house and equipment was a little more than $4,000.

8

At the time I built my first house, the Arrendales guaranteed a payment of $50 per 1,000 chickens sold, and I was able to make enough money back to pay for the house and equipment completely the year after I built it.

9

At the time I built my first house, the Arrendale contract program worked as follows: the Arrendales would deliver the chicks and feed, and bill them to me on account at prices which would give them a profit on the chicks and feed. At the end of the growout, the Arrendales picked up the birds and sold them to a processor. Gross receipts from sale of the birds was first applied to my account, paying for the chicks and the feed. I got all profit on the sale of the chickens after payment for the feed and chicks.

10

Under the contract I couldn't have any loss, because the Arrendales guaranteed $50 per 1,000 regardless of the live bird price when they were sold.

11

In 1958 I went into business with my uncle, who owned another farm. My uncle built two chicken houses on the farm, and I furnished all the labor to grow out the chickens under the contract with the Arrendales. My uncle and I had an arrangement whereby we would share the grower payments.

12

At the time I was growing chickens with my uncle, I also owned my present farm and raised hogs, cattle and some row crops.

13

Once during the period when I was growing chickens with my uncle, half of one of the houses burned down, and about 10,000 four-week old chickens we were growing under contract for the Arrendales were killed.

14

Even though their chickens were lost, the Arrendales paid us enough to cover costs. At the time of the fire, the chickens were about half-grown. We had been averaging about $80 per 1,000 in payments, and I believe they paid us $40 per 1,000 on the chickens destroyed in the fire.

15

I built my present chicken houses on my farm in 1966. The cost of the two houses, which have a combined capacity of 36,000 birds per cycle, was around $46,000, which included grading and road building costs, the buildings and all equipment. The buildings have a useful life of at least 20 years, and the equipment should last at least 8 or 10.

16

My farm consists of 175 acres in all. Of this, no more than 4 acres are devoted to the raising of broilers including the roadways and all other land tied up in the broiler operation.

17

In addition to broiler growing, I also breed and raise cattle, which I sell as feeder calves at auction.

18

I buy everything that goes into the cattle operation myself, and I take all of the risk in producing cattle and in marketing them.

19

The only risk I face in broiler growing is that something could happen to Fieldale and they could go bankrupt.

20

Fieldale owns the flock, and my chicken houses and equipment are all insured.

21

The only thing I stand to lose on my flock is my labor and my fuel and litter bill. There is really no way I can lose that, unless I don't manage the chickens the way I am supposed to.

22

I have never lost money on a flock since I have been growing chickens under contract with the Arrendales.

23

I have always gotten replacement flocks on a regular basis, and I feel like I will continue to get chickens as long as Fieldale is putting them down. I know that they have a lot of money invested in the broiler business, and people don't do that unless they plan to stay in business.

24

The minimum payment of 2.60 cents per pound now guaranteed by Fieldale Corp. would more than cover my costs involved in the growout. I have never been paid the minimum, however, and my payments are usually substantially better than the minimum amount guaranteed.

25

There is no live market for broiler chickens today, and I could not raise chickens if there were no contract growing program.

26

Contract growing is much better for the little fellow. A person like me couldn't stand the risk—one loss could wipe me out.

27

If I could no longer grow chickens under contract, I would have to look for some off-farm employment. My fields are too small for row-cropping, and there is no incentive to expand my cattle business, with cattle prices being what they are today.

28

I do most of the work in connection with the growout myself. I need some help when a flock is first put in, and also after the pickup when we clean out the house. I hire somebody for a total of about 10 days for each cycle. At 5 flocks per year, and at $16 per day, my total hired labor expense runs about $800 per year.

29

In 1974, I settled 5 flocks with Fieldale, and I received gross payments totaling $21,541.00.

30

I estimate my current annual expenses in connection with my broiler growing operation as follows:

Item	Annual Cost
Fuel	$1,613.39
Electricity	900.00
Insurance	451.20
House and equipment upkeep and maintenance	400.00
Hired labor	800.00
Shavings (litter)	1,200.00
Taxes	Unknown

All water expense is included in the electricity expense.

The shavings expense shown above was offset at least in part by the fact that the litter and chicken manure taken from cleanup of the house was spread on my pasture as fertilizer. I don't know how to calculate the total value of the chicken litter and manure, but I do know that it out performs commercial fertilizer on pasture land.

My total combined ad valorem and property taxes for all buildings and all 175 acres on my farm was $1,065.87. I do not know what part of that was attributable to land, buildings and equipment used in broiler growing.

31

For tax and bookkeeping purposes I am depreciating my broiler houses on the straight line method over a period of 10 years, at the rate of $3,293.50 per year. I am depreciating the equipment on the straight line method over a period of 8 years, at the rate of $1,344.56 per year. Thus, my total depreciation expense for 1974 was $4,638.06.

/s/ KIRK H. DAVIS

Sworn to and subscribed before me this 8th day of April, 1975.

(Illegible)
Notary Public

In the United States District Court for the
Northern District of Georgia
Atlanta Division

(Title omitted in printing)

AFFIDAVIT OF DR. VERNER G. HURT

(Filed May 1, 1975)

State of Mississippi
County of Oktibbeha

I, Verner G. Hurt, after first being duly sworn, on oath depose and say the following:

1

I make this affidavit for use by National Broiler Marketing Association in support of its Motion for Summary Judgment in this action.

2

My residence is 702 Cottonwood Drive, Starkville, Mississippi 39759.

3

I am presently employed as Department Head, Department of Agricultural Economics, Mississippi State University, and have held the position of Department Head since 1972. I have been a member of the faculty of the Department of Agricultural Economics at Mississippi State University since 1956, at which time I joined the Department faculty, with the exception of a two year period, 1958-1960, during which I was a Research Assistant in the Department of Agricultural Economics at Oklahoma State University.

4

As Department Head, I have supervisory responsibility for all the teaching and research functions of the Department of Agricultural Economics, including research in connection with broiler production and marketing.

5

I received my Bachelor of Science degree from Mississippi State University in 1950. I received my Master of Science degree in Agricultural Economics from Mississippi State University in 1955. I received my Ph. D. in Agricultural Economics from Oklahoma State University in 1961. I completed postdoctoral work at the NSF Institute on Mathematics of Optimization, University of Missouri, in 1965.

6

In my capacity as an agricultural economist at Mississippi State University and as a consultant in agricultural economics I am familiar generally with the organization of the broiler industry and the management of broiler production and also with marketing and pricing practices in the industry.

7

The broiler industry has been almost completely integrated vertically for many years. Integrated broiler production includes raising and breeding of breeder flocks to produce eggs for hatching as broiler chicks, hatching of broiler eggs and placement of broiler chicks, raising of broiler chicks for a period of seven to nine weeks, catching, cooping and hauling live birds to processing facilities, and processing and preparation of the birds as ready-to-cook (RTC) broilers.

8

The management of broiler production is carried on almost exclusively today by integrated producers, who combine breeder flocks, hatcheries, feed manufacturing facilities, broiler flocks, processing plants and distribution facilities under one ownership or management system. More than 95% of the broilers marketed in the United States are now produced by integrated producers.

9

Integrated broiler producers accomplish the growout of their broiler chickens (raising the chickens from day-old chicks to seven-to-nine-week-old chickens) either through hired labor on company owned farms or through contractual arrangements with independent contractors, known as growers, whereby the contracting growers provide facilities and labor necessary to care for the chickens for the growout period as determined by the integrator.

10

At all times during production, the integrated producer owns the broiler flock, the feed, medicines and vaccines and most other supplies essential to the production of a marketable broiler.

11

Although the individual grower can decide whether or not to contract with a particular integrated producer, once a contract growing relationship is entered substantially all decisions with respect to both production and marketing of the broilers produced under contract are made by the integrated producer.

12

Integrated producers make all decisions with respect to the overall number of broilers to be produced or brought to market at a given time, because the integrated producer can determine the number of chicks to place and the number of growers with whom he desires to contract. Thus, substantially all decisions with respect to the number of broilers scheduled for production and marketing are made by integrated producers.

13

Integrated producers, who usually own hatcheries, breeder farms, feed manufacturing facilities and/or processing facilities, have a substantial investment in land, buildings and equipment devoted to the production of RTC broilers from the breeder flock stage through the processing and marketing stage.

14

In addition to land, buildings and equipment, the integrated broiler producer has a substantial investment in breeder flocks, hatching eggs, chicks, feed, feed ingredients, medicines, vaccines and health supplies invested in broiler production.

15

The contract grower's risk of investment in broiler production is limited to the value of his investment in his labor, his broiler houses and equipment, utilities such as fuel and electricity for the broiler houses, and occasionally certain other supplies such as litter.

16

Broiler growers have no investment in any phase of broiler production other than the growout phase.

17

The grower's investment in farm land devoted specifically to the raising of broilers is not substantial compared to other agricultural production, because the land requirement is limited to the land underlying and immediately adjacent to the grower's broiler houses and the area required for a roadway to the houses.

18

Production contracts between integrators and growers are essentially labor contracts together with a fee for the use of the grower's facilities and what little land is involved.

19

In the actual operation of contract broiler production, practically all of the risk of loss is transferred to the integrator, because the grower is generally guaranteed a minimum payment which is adequate to cover his fixed costs, his out-of-pocket expenses and some or all of his labor.

20

Broiler integrators supply inputs accounting for between 85% and 95%, depending on the individual contract, of the live bird cost including feed, chicks, medications, veterinary supplies and services, growout supervision and some labor involved in catching, cooping and hauling. A 1967 study, the results of which were reprinted in USDA Economic Research Service Marketing Research Report No. 930, p. 8 (May, 1971), showed the following typical percentage distribution of broiler production costs:

	Percent
Feed	62.4
Chicks	19.2
Grower payment	12.0
Fuel	2.0
Medications	1.6
Vaccination	1.2
Litter	.8
Miscellaneous	.8

Since the time of the study, feed costs have increased substantially and in 1974 accounted for approximately 70% of the live bird production cost. Data published by USDA in Poultry & Egg Situation, March, 1975 (PES-285), at Table 2—Estimated Production Cost, Total Cost, and Net Returns for Broilers, 1972-1974 a copy of which is attached hereto, shows the 1974 annual average total estimated live bird production cost to be 22¢ per live weight pound, of which 15.8¢ (approximately 72%) was accounted for by feed. The higher feed cost alters the percentage distribution to increase the percentage accounted for by feed and chicks, reducing the percentage accounted for by other inputs including grower payments. Currently, payments to growers account for approximately 10% of the live bird production costs incurred by integrators.

21

Payments made to growers by integrators represent an amount adequate to cover all costs accounted for by the growers, including fixed costs, out-of-pocket expenses, and labor (or profit, if hired labor is used by the grower). Thus the remaining

88% to 90% of the live bird production cost is accounted for by inputs supplied entirely by the integrator.

22

As the attached Table 2 indicates, the live bird production costs account for little more than half of the total wholesale cost of producing the ready-to-cook broiler, the form in which the broiler is first sold in the open market. All of the production costs beyond the live bird costs represent investments made by the integrator in producing the marketable broiler.

23

The broiler integrator is the principal risk-bearer in broiler production, because the integrator supplies inputs accounting for most of the production costs and has no guarantee of any return when he sells the product on the open market. The grower's main risk is that the integrator with whom he contracts will go out of business.

24

Although many contracts are written for only one flock, growers of at least average efficiency are assured by custom and practice of regular placement of chicks by the broiler integrators with whom they contract. Continuity of production makes continuing relations with growers a practical necessity.

25

Integrated broiler production has developed in areas of limited alternative agricultural enterprise and has replaced or supplemented incomes derived by rural families from other agricultural sources, such as cotton and truck farming. Had it not been for the development of integrated broiler production, our farm population today would be considerably less than it is.

26

The RTC broiler market in which the integrated broiler producer sells has all the characteristics of the typical agricultural market: the product is perishable and is produced through a biological process; once production is committed, the producer must either sell his product or destroy it; pricing is characterized by volatility and instability, a characteristic which is harmful to both producers and consumers; and the product is distributed through middlemen intervening between the integrated producer and the consumer.

27

The key production decisions affecting placement of breeder chicks, setting of broiler eggs in hatcheries and placement of day-old broiler chicks for growout must be made by integrated producers well in advance of the marketing period for broilers produced. These decisions, which control the number of birds arriving on the market at a given date, must be made by the integrator with no knowledge of the demand which will exist for his product when it reaches the market except for historical patterns and trends.

28

Historical patterns and trends in demand are frequently modified by unanticipated and unforeseeable occurrences, such as retail price specials, fluctuations in retail prices for beef and pork, labor strikes, weather conditions, etc.

29

A retailer's decision to feature broilers during a given week, for example, can double consumer demand for broilers during the feature week, and substantially reduce demand below normal during the week or weeks following such a feature. Integrated producers of broilers cannot anticipate the timing of feature activity by retailers in their production planning.

30

Nearly 90% of all federally inspected RTC broilers are sold fresh, in ice pack or chilled (non-frozen) form. In commercial practice, ice-packed and chilled broilers must be sold to the ultimate consumer within seven to ten days of slaughter. Because of this limited shelf life, broiler integrators must sell all their fresh product within a maximum of four days from time of slaughter.

31

Birds which are not slaughtered when they reach marketable size continue to increase in weight beyond desirable levels. The normal demand for RTC broilers at wholesale is confined to birds ranging in weight from approximately 2 to approximately 3½ pounds dressed weight. Birds which substantially exceed this weight in the integrated producer's inventory must normally be sold at a discount below the prevailing market price for desirable weight birds.

32

Violent swings in day-to-day or week-to-week purchases create substantial problems for producers of agricultural products, and create particular problems for the broiler industry. The product is perishable; it has to be moved in a relatively short period of time and cannot be stored and held, and the production process for broilers is such that the flow of product cannot be varied substantially from day to day once the decision has been made to produce at a certain rate over time.

33

Achievement of healthy production and orderly marketing of broilers will require effective production planning and price discovery by broiler integrators. The broiler industry has a capacity for production to meet peak demand, which exceeds the normal demand existing during a substantial portion of

the year, and broilers must frequently be sold by integrated producers at prices below their cost of production.

/s/ VERNER G. HURT

Sworn to and subscribed before me this 2nd day of April, 1975.

(Illegible)
Notary Public

My Commission Expires November 10, 1978.

Table 2—Estimated production costs, total costs, and net returns for Broilers, 1972-74[1]

Period	Production costs		Total wholesale ready-to-cook costs[1] [2]	9-city weighted average broiler price[3]	Net returns[1] [2] [5]
	Feed[1]	Total[1]			
	Cents per pound liveweight		Cents per pound liveweight		
1972					
1st quarter	8.3	13.6	27.2	27.8	0.6
2nd quarter	8.8	14.2	28.0	27.2	-0.7
3rd quarter	9.2	14.6	28.5	29.6	1.1
4th quarter	9.7	15.0	29.2	28.0	-1.2
Annual average	9.0	14.3	28.2	28.2	-0.1
1973					
1st quarter	12.2	18.0	34.0	37.0	3.0
2nd quarter	14.2	20.1	36.9	42.2	5.4
3rd quarter	21.2	27.0	46.5	52.8	6.3
4th quarter	17.6	23.4	41.5	37.2	-4.3
Annual average	16.4	22.2	39.8	42.4	2.6
1974[4]					
1st quarter	16.1	22.3	40.5	39.3	-1.2
2nd quarter	15.2	21.3	39.2	35.3	-3.9
3rd quarter	14.5	20.7	38.3	37.6	-0.7
4th quarter	17.7	23.8	42.6	40.4	2.3
Annual average	15.8	22.0	40.1	38.0	-2.0

[1] Based on secondary data and incomplete data from survey. Estimated by computerized formula. [3] Weighted by monthly broiler slaughter. [2] Based on farm cost converted to wholesale market values for ready-to-cook broilers. [4] Preliminary. [5] May not add across due to rounding.

Table 3—Estimated production costs, total costs, and net returns for Turkeys, 1972-74[1]

Period	Production costs		Total wholesale ready-to-cook costs[1] [2]	New York heavy young hen turkey price[3]	Net returns[1] [2] [5]
	Feed[1]	Total[1]			
	Cents per pound liveweight		Cents per pound ready-to-cook		
1972					
1st quarter	11.9	18.9	32.2	36.9	4.7
2nd quarter	12.9	19.9	33.3	34.8	1.4
3rd quarter	13.5	20.5	34.1	35.3	1.2
4th quarter	14.1	21.1	34.9	38.5	3.7
Annual average	13.5	20.5	34.1	36.6	2.8
1973					
1st quarter	15.4	22.9	37.8	45.1	7.3
2nd quarter	19.8	27.3	43.3	55.9	12.6
3rd quarter	27.0	34.5	52.3	69.2	16.9
4th quarter	28.2	35.7	53.8	67.2	13.4
Annnual average	25.6	33.1	50.6	64.5	13.9
1974[4]					
1st quarter	22.1	30.3	48.4	49.9	1.6
2nd quarter	23.6	31.8	50.2	39.2	-11.0
3rd quarter	19.9	28.1	45.6	45.6	-0.1
4th quarter	24.8	33.0	51.7	52.1	0.4
Annual average	22.5	30.7	48.8	47.0	-1.8

[1] Based on secondary data and incomplete data from survey. Estimated by computerized formula. [3] Weighted by monthly turkey slaughter. [2] Based on farm cost converted to wholesale market values for heavy young turkey hens. [4] Preliminary. [5] May not add across due to rounding.

In the United States District Court for the
Northern District of Georgia
Atlanta Division

(Title omitted in printing)

AFFIDAVIT OF RICHARD C. LARKIN

(Filed May 1. 1975)

State of Georgia
County of Fulton

I, Richard C. Larkin, after first being duly sworn, on oath depose and say the following:

1

I make this affidavit for use by National Broiler Marketing Association in support of its Motion for Summary Judgment made in this action.

2

I know of my own personal knowledge the facts stated in this affidavit.

3

My residence is 200 North Jackson Street, Arlington, Virginia.

4

I am currently employed by National Broiler Marketing Association on a consultant basis as Director of Economic Research.

5

I received a Bachelor of Science degree and a Master of Science degree in Agricultural Economics, both from North Carolina State University in Raleigh, North Carolina.

6

Upon receipt of my Masters degree, I joined the Soil Conservation Service of the United States Department of Agriculture (USDA) in Raleigh working on an experimental project which involved analyzing farm records to test the economic practicality of various soil conservation projects.

After a year with the Soil Conservation Service, I spent a year with the War Production Board as an economist dealing in the allocation of ferro alloys.

7

I next spent two years with the Office of Price Administration analyzing and preparing ceiling prices for eggs, chickens and turkeys.

8

In 1946, I was employed by the Poultry Division of USDA. I left USDA in 1947 to work for a year as assistant to the manager of a farmers mutual exchange in Durham, North Carolina, operated by an agricultural cooperative which included eggs and broilers in its production and marketing.

9

In 1948, I returned to USDA and was employed in the Poultry Division until my retirement in February of 1971.

10

Upon my retirement from USDA, I was employed by NBMA on a consultant basis as Director of Economic Research.

11

I have been a member of the American Farm Economic Association, and I have received various merit awards from USDA including a substantial cash award which I received for my work in developing USDA's least cost procurement program in connection with the procurement of broilers and turkeys.

12

During my employment with USDA, I served in various capacities as an economic advisor to the Director of the Poultry Division. Among my responsibilities during my employment with the Poultry Division were program analysis, responsibility for poultry procurement for the school lunch program, responsibility for surplus removal purchase programs, and responsibility for the preparation of marketing guides with respect to broilers, turkeys and eggs.

13

Nearly all of my career with the Poultry Division of USDA involved me in analysis of supply and demand conditions and price trends in the poultry area.

14

One of the purposes of the school lunch program, surplus removal purchase programs and publication of marketing guides with respect to agricultural products is and always has been to prevent and control surpluses in any agricultural commodity and to promote orderly production and distribution of such commodities, so as to maintain advantageous domestic markets and prevent such surpluses from causing undue and excessive fluctuations or depressions in prices for the commodity. This congressional policy, under which USDA and the Poultry Division have operated, is declared, among other places, in the Agricultural Marketing Act of 1929 (12 U.S.C. § 1141[a][4]).

15

During my employment with USDA, stability of price and production levels in the broiler industry was always recognized as being to the advantage of both the producer and the consumer, and the Broiler Marketing Guides were developed and published with the intention of recommending to the broiler industry a level of production which would result in prices which over time would stabilize production and eliminate violent year to year changes in both price and production levels.

16

The USDA Broiler Marketing Guides were first published in 1969, and publication of the guides was continued through the second quarter, 1973 issue. Thereafter, the title of the series was changed to "Broiler Marketing Facts", and the production level recommendations, which were made in the Broiler Marketing Guides, were discontinued.

17

The Broiler Marketing Guides were prepared under my supervision in the Poultry Division of USDA. Other USDA units also participated, including the Statistical Reporting Service, the Economic Research Service and the Extension Service.

18

The Broiler Marketing Guides were published quarterly, and most issues recommended a cutback or increase in production by the broiler industry. The marketing guide recommendations were intended to be meaningful and realistic recommendations which would produce a level of production calculated to generate prices at levels which would ensure stability of production over all.

19

The Broiler Marketing Guides were designed for assistance to, and implementation by, integrated broiler producers.

20

There is no significant live market for broiler chickens today, and nearly all broilers are first sold on the open market in processed, ready-to-cook (RTC) form by integrated broiler producers. At least 95% of the broilers marketed in the United States in recent years have been produced by integrated producers.

21

Integrated broiler producers, or "integrators", are firms which manage the production of broilers from the breeder flock stage through processing and marketing RTC broilers, owning or otherwise controlling breeder flocks and hatcheries, feed mills or other feed supply sources, and facilities for processing and marketing RTC broilers.

22

The growout phase (raising the chickens from day-old chicks to 7 to 9 weeks old chickens) is accomplished in most cases through contractual arrangements with independent contractors, known as growers, under the direction and control of the integrators. The integrators own the chickens and supply all feed, medication and most other essential supplies, while the growers provide facilities and services necessary to care for the chickens as prescribed by the integrator.

23

Commercial broiler production as we know it today is largely a post-World War II phenomenon. During the period since World War II, as integrated production and contract growing developed in the southeastern United States, the production of broilers in the United States increased from less than 1 billion to more than 11 billion pounds. ("Egg and Poultry Statistics June 1957"), USDA Agricultural Marketing Service, Statistical Bulletin No. 249 (May 1959) [Table 7.8]; "Poultry and Egg Statistics Through 1972", USDA Economic Research Service, Statistical Bulletin No. 525, [January, 1975] [Table 16]; "Chicken, Eggs and Broilers: Production, Disposition, Cash Receipts and Gross Income, 1972-1973 by State", USDA Statistical Reporting Service, Crop Reporting Board, Pou 2-3[74] [April 1974] [p.10]).

24

The development of commercial broiler production came about at the initiative of integrated producers, who began as growers, hatcherymen, feed dealers, feed manufacturers or broiler processors and over time assumed the risks of investment in feed, chicks and supplies and also assumed the risk of finding a market for the broilers.

25

Integrated broiler production has developed in areas of limited alternative agricultural enterprise, and has replaced or supplemented incomes derived by rural families from other sources.

26

Production planning by integrated broiler producers must be done almost entirely without knowledge of the market conditions which will prevail when their products are marketed other than historical generalities.

27

Production decisions for integrated broiler producers begin as much as 18 months before the product of those decisions reaches the market, with the decisions relative to placement of breeder chicks.

28

The final opportunity for adjustments in the broiler integrator's production comes at the point where broiler chicks are placed for the growout, a point approximately 8 weeks (between 7 and 9 weeks, depending on the type of chicks, the season and weather conditions, the feed used, the weight bird desired by the producer's customers and other factors) prior to the date on which the broilers will be ready for slaughter and must be marketed.

29

The key production decisions for integrators producing and marketing broilers must therefore be made well in advance of the period within which the broilers must be marketed.

30

Fresh broilers are highly perishable.

31

More than 90% of all federally inspected RTC broilers are sold in non-frozen, chilled (ice- or CO_2- packed) form. According to the January 30, 1975 issue of "Poultry Slaughter", issued by the United States Department of Agriculture, Statistical Reporting Service, Crop Reporting Board (Table, p. 2), only 616,559,000, or 7.8% of the total 7,916,835,000 total pounds of broilers certified by USDA were marketed as frozen product.

32

In June 1966, the National Commission on Food Marketing published a staff study entitled "Organization and Competition in the Poultry and Egg Industries", Technical Study No. 2, National Commission on Food Marketing. The study was prepared by the Commission staff, with the formal and informal assistance of several divisions of the U. S. Department of Agriculture. I consider Technical Study No. 2 and its findings reliable and in general accord with my own observations as an economist and employee of the United States Department of Agriculture, Poultry Division about the production and marketing of broilers. Attached to and incorporated in this affidavit are copies of pages 50, 52, and 53 of the National Food Commission Technical Study No. 2.

33

The Food Commission study reported the following findings with respect to bargaining relations between integrated producers of broilers and their customers, and in my opinion the statement of their findings accurately reflects the true facts at the time of the study and today:

> "An additional factor of considerable importance is the perishability of the products, particularly ice-packed chicken. Broilers are produced continuously, with little leeway in timing of slaughter. When supplies build up, retail buyers must be found. No important alternative outlet is available to divert surplus supplies.
>
> The retail organization has greater latitude in determining how many chickens to buy than the processor in determining how many to sell. Retail merchandising practices thus are highly important to suppliers. Retail specialing creates large product demands during special weeks but greatly reduced demands during non-special weeks.
>
> It should be noted that the largest retail chains typically have not specialed chickens in all divisions the same week. Hence, their overall store demand for chickens has been more stable from week to week than demand of smaller chains that have only one weekly sales plan for the entire operation. However, some suppliers have served some divisions of a chain but not others, because of location and other factors. Where this has been the case, fluctuating division requirements were translated into fluctuating demand facing regular division suppliers.
>
> For processors regularly dependent upon selling large volumes to certain customers, fluctuating retail requirements have caused suppliers to be burdened periodically with heavy inventories. When unsold supplies piled up, suppliers found themselves in rapidly deteriorating bargaining positions and were increasingly willing to sell at prices below current market levels."

34

Broilers are produced through a biological process, and once production is committed by the integrated producer, he must either sell his product or destroy it.

35

Broiler integrators, and not contract growers, absorb the primary impact of price fluctuations, both for feed and other input costs and for broiler prices in the market.

36

Integrated broiler producers often market their product at prices insufficient to return to them their cost of producing the broilers, and the broiler market during several recent years has been characterized by violent price swings within the year.

37

The demand for broilers is for birds in a fairly narrow weight range of from approximately 2 to approximately 3½ pounds dressed weight.

38

Broiler chickens which are not slaughtered when they reach desirable market weight remain in the field consuming feed, and thereby increasing the production cost incurred by the integrated producer. Birds surpassing desirable weight must normally be sold at a discount below prevailing price levels for desirable weight birds. Thus, the cost per pound increases while the realizable price per pound decreases if broiler chickens are not slaughtered when they reach the market weight desirable to the integrated producer's customers.

39

The market conditions under which RTC broilers are produced and marketed are typical of conditions in agricultural markets generally, and in some cases even more difficult for producers to cope with than conditions with respect to other commodities. Broilers are a perishable commodity, and must be marketed regardless of demand; the sellers are comparatively small, scattered and uninformed with respect to inventories and demand, and are consequently highly susceptible to overproduction; the demand is seasonal and cyclical, and there are ready substitutes—for example beef and pork—available; the market price fluctuates weekly; the market is dominated by concentrated buyers; and market signals cannot flow to producers in such manner as to allow them to balance production with demand.

/s/ **RICHARD C. LARKIN**

Sworn to and subscribed before me this 30th day of April, 1975.

THEODORA FERNIANY
Notary Public

Notary Public, Georgia, State at Large
My Commission Expires Feb. 20, 1978

TABLE 6–3.—*Sales of eggs by selected egg handlers to largest customers* [1]

Firm group	Percent of sellers' egg sales to—		
	Largest customer	2d through 5th customers	5 largest customers
	Simple average percent for group		
Firms by million dozen sold monthly:			
1-5 (12 firms)	23.1	31.8	54.9
Under 1 (19 firms)	37.4	33.3	70.7

[1] Firms were requested to report sales by customer to their 5 largest customers for a period of at least 2 months between Nov. 1, 1964 and Apr. 30, 1965. Data furnished were then converted to monthly averages and percentages computed for each firm. Percentages reported in this table are simple averages for each group.

Source: National Commission on Food Marketing survey, 1965.

firms. But for turkeys, smaller firms sold relatively more to these three chains.

Brokers were used by several reporting poultry and egg firms (table 6-5). Products sold through brokers by firms using them averaged between 6 and 44 percent. Average brokerage rates for chickens and turkeys ranged between .31 and .35 cents per pound and for eggs around one-half cent per dozen.

Bargaining Relations

Nationally, the largest 20 young chicken and turkey processors have accounted for a larger proportion of industry volume than has been purchased by the largest 20 retailers. But several conditions in addition to relative national concentration affect bargaining strength. Important among these conditions is the tendency for buyers and sellers to deal fairly regularly and consistently with each other. Location of buyers and sellers with respect to each other places practical limitations on the number of customers a seller can efficiently serve. Small volume sellers in particular tend to deal with relatively nearby customers.[6] Volume and product uniformity requirements of large buyers make it advantageous for them to deal with suppliers who can furnish their requirements on a consistent basis.

An additional factor of considerable importance is the perishability of the products, particularly ice-packed chickens. Broilers are produced continuously with little leeway in timing of slaughter. When supplies build up, retail buyers must be found. No important alternative outlet is available to which to divert surplus supplies.

---

[6] In a 1962 survey of 58 processing plants, plants slaughtering under 50,000 birds weekly marketed 69 percent of their volume within 50 miles of the plant and 31 percent between 50 and 100 miles. Larger plants marketed most of their birds over 100 miles away. Krueger, R. J., *op. cit.*

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TABLE 6–5.—*Use of brokers and brokerage rates paid by type of product and firm, 1964*

Type of product	Type of firm	Firms using brokers		
		Number	Average percent handled by brokers [1]	Average brokerage rate, cents per pound (or dozen eggs) [1]
Chickens	Chicken processor only	17	21	0.34
	Chicken processor handling other poultry products	16	18	.31
Turkeys	Turkey processor only	5	6	0.35
	Turkey processor handling other poultry products	10	44	.31
Eggs	Egg handler or processor only	20	21	0.48
	Egg handler with other poultry products	5	11	.50

[1] Simple average for firms reporting use of brokers.

Source: National Commission on Food Marketing survey, 1965.

The retail organization has greater latitude in determining how many chickens to buy than the processor in determining how many to sell. Retail merchandising practices thus are highly important to suppliers. Retail specialing creates large product demands during special weeks but greatly reduced demands during nonspecial weeks.

It should be noted that the largest retail chains typically have not specialed chickens in all divisions the same week. Hence, their overall store demand for chickens has been more stable from week to week than demand of smaller chains that have only one weekly sales plan for the entire operation. However, some suppliers have served some divisions of a chain but not others, because of location and other factors. Where this has been the case, fluctuating division requirements were translated into fluctuating demands facing regular division suppliers.

For processors regularly dependent upon selling large volumes to certain customers, fluctuating retail requirements have caused suppliers to be burdened periodically with heavy inventories. When unsold supplies piled up, suppliers found themselves in rapidly deteriorating bargaining positions and were increasingly willing to sell at prices below current market levels. The fact that smaller suppliers have tended to sell larger proportions of their outputs to individual customers has increased the uncertainty of the demands they faced, compared with larger firms who could spread their sales over a greater number of customers.

Since most turkeys have been marketed frozen, they could be stored if current market conditions were judged unsatisfactory. However, they

eventually had to be sold mainly through retail outlets. Retailers must merchandise turkeys heavily during Thanksgiving and Christmas holidays to satisfy traditional consumer demands of these times, but they have been able to exercise a great deal of latitude over how frequently they specialed turkeys at other times of the year and how much retail counter space they gave to turkeys.

For eggs, supplier-customer relationships have tended to be more regular and consistent than for chickens and turkeys. Sellers have guarded especially against losing customers because new ones have been difficult to find.

Exchange practices have reflected the stronger bargaining positions of buyers. When concessions or allowances were made, they usually flowed in one direction—from seller to buyer, not from buyer to seller. Allowances have taken a variety of forms: Quantity discounts to large buyers, advertising allowances, and price reductions. In some instances, bribery, cash payments and gifts from sellers to buyers have been involved, instances of which have come to the attention of Government regulatory agencies. Egg handlers frequently have granted concessions to retailers for the privilege of becoming suppliers of new stores and to avoid losing accounts. Turkey processors indicated that some retailers would buy the processor's branded product only if they also packed turkeys under the retailer's label.

Evaluation of poultry buyer-seller relationships from the standpoint of effective competition is a difficult process in which a number of factors must be considered. Continuing organizational change and new trading arrangements will raise new questions concerning the competitive environment and the encouragement and maintenance of free and open competition on the basis of price, quality, and service.

Pricing Processes

Variations have existed in the mechanics by which prices for chickens, turkeys, and eggs were established. But for each commodity there has been a great deal of formula pricing. Poultry processing firms and egg handlers responding to a question on formula pricing reported as follows:

Type of product	Percent of transactions to most important customers with prices tied directly by formula to a specified market quotation in 1964–65 [1]
Chickens	42
Turkeys	28
Eggs	72

[1] Firms were requested to report pricing methods on sales to their 5 largest customers for a period of at least 2 months between Nov. 1, 1964, and Apr. 30, 1965.

Source: National Commission on Food Marketing Survey, 1965.

Firms in all size groups sold poultry and eggs on formula bases, although for chickens and turkeys the largest firms reported relatively fewer formula sales than other sellers. In some instances, averages of 2 or more days'

In the United States District Court for the Northern District of Georgia, Atlanta Division

(Title omitted in printing)

AFFIDAVIT OF MAURICE B. LAYTON

(Filed May 1, 1975)

State of Mississippi
County of Simpson

I, Maurice B. Layton, after first being duly sworn, on oath depose and say:

1

I make this affidavit for use by National Broiler Marketing Association in support of its Motion for Summary Judgment made in this action.

2

I know of my own personal knowledge the facts stated in this affidavit.

3

My residence is Route 3, Box 281, Magee, Mississippi.

4

I am and have been since 1969 a contract broiler grower for McCarty Poultry Farms, Inc.

5

I own two 15,000 square foot broiler houses having a combined total growout flock capacity of 30,000 chickens per cycle.

6

I built my first house in 1966. At that time I was under contract to raise breeder pullets for the Magee Cooperative. Construction and equipment of my first house cost approximately $10,000. Construction of the house was financed through the Federal Land Bank Association. The Federal Land Bank loan was for an amount approximately 50% to 60% of the value of the house (without equipment), and allowed payment over a 15 or 20 year term. I bought the equipment for my first house outright, with no financing.

7

My broiler houses and equipment are fully insured.

8

In 1969, at the time I started growing with McCarty Poultry Farms, Inc., I built and equipped my second house at a total cost of approximately $12,500. I financed construction of my second house in the same way I financed my first house.

9

Between 1966 and 1968, I raised breeder pullets for the Magee Cooperative. During that time, I was also employed as a pullet and broiler serviceman by Magee Cooperative. In 1968, Magee Cooperative went out of the chicken business. Its assets and most of its growers were taken over by MFC Services (AAL), a federated cooperative.

10

In 1969, when I began growing broilers for McCarty Poultry Farms Inc., my contract with McCarty paid an amount per pound based on the Mississippi FOB Dock Equivalent wholesale price and on my feed conversion efficiency. Regardless of the market price or feed conversion efficiency, the contract guaranteed payment of 5 cents per bird placed.

11

My present contract bases payment on a base rate plus or minus a bonus or deduction from the base payment calculated on the basis of my feed conversion efficiency. Regardless of efficiency, however, the present contract guarantees payment of 6½ cents per bird placed.

12

My actual payments since I began growing broilers for McCarty have averaged between 8½ and 9 cents per bird.

13

I have not lost a flock or any substantial part of a flock since I have been growing broilers for McCarty. I don't know of any way you could lose a flock, except by having a tornado destroy the house, or to have the Government condemn the flock as in the Dieldrin situation.

14

In March of 1974, I had a flock of broilers in my houses which I had been growing for 3 or 4 weeks. At that time, I was notified by McCarty that the birds were going to be condemned by the Government because of Dieldrin contamination. After I was notified of the possible contamination, I was instructed by McCarty to feed the birds on a limited survival ration for 4 or 5 days. After that, the entire flock was destroyed.

15

Four or five weeks after destruction of the contaminated flock, at the end of what would have been the normal growout period for the batch which was destroyed, I received a check from McCarty Poultry Farms, Inc. in an amount equal to 6½ cents per bird placed with me at the beginning of the growout, even though all of the birds were destroyed in the middle of the growout period.

16

Since none of these birds had been sold, and also since I had only grown them for half of the normal growout period, I did not expect to receive any payment for the birds. I was only hoping that McCarty Poultry Farms, Inc. would be able to stay in business after the loss.

17

I have always gotten chickens from McCarty on a regular placement cycle. The period between the removal of one flock and the placement of the next flock can vary from two weeks to as much as five weeks; however, I always average about 4½ flocks each year. Even after the Dieldrin loss, I got a replacement flock on the next cycle in my normal place in the sequence.

18

There is no great risk in broiler growing for me—I am guaranteed enough to get my cost and labor out of it.

19

Broiler growing is a low risk operation, because the integrator takes most of the risk. I have been farming all my life, and this is the least risk I have ever known of. Both the marketing risk and the risk of feed price fluctuations is taken by the integrator.

20

My only real risk is that McCarty Poultry Farms, Inc. could go out of business and I couldn't grow chickens on another program. I feel like as long as McCarty is in business, I will make money.

21

There are a number of competing broiler programs in or near this area, including MFC, Sanderson, Morton Broilers, Fred

Moore, Southeastern Hatcheries, Wayne Poultry Company and Marshall Durbin Company.

22

If it were not for my broiler growing operation, I would have to seek employment off the farm. Growing chickens on contract, I know where some money is coming from. It would be hard to stay here without chickens.

23

The small fellow like me could not produce chickens profitably on his own.

24

My farm consists of 320 acres in all. Less than 5 acres of that is tied up in the broiler growing operation. I raise cattle on 240 acres, and the remainder is in timber.

25

I have about 300 head of cattle. I buy the calves myself, and also buy protein supplements, fertilizer, medication and vaccines.

26

I sell some of my cattle as feeder calves, and I graze some of them through winter and sell them in the spring.

27

I take all the risk in producing cattle, and I have lost money on my cattle production over the last two years.

28

I have never lost any money on a flock of broilers under contract with McCarty. There is no way we can lose any money unless the integrator goes broke.

29

The minimum payment guaranteed by McCarty would cover my costs, and that income would at least let us stay here. I have always made two or three cents per bird more than the minimum, however, and the only time I have been paid the 6½ cent per bird minimum was during the Dieldrin situation when the entire flock was destroyed.

30

In 1973, I settled five flocks with McCarty, for a total gross of approximately $14,500. In 1974, I settled four flocks, for a total gross of approximately $10,500. The 1974 gross included payment for the destroyed flock at the 6½ cent per bird minimum.

31

I estimate my annual operating costs in connection with broiler raising under contract as follows:

Item	Annual Cost
Fuel (Butane)	$1,200.00
Electricity	120.00
Insurance	342.00
House and equipment upkeep and maintenance	1,000.00

McCarty Poultry Farms, Inc. furnishes all litter used in my operation.

All expense for water is included in the electricity expense.

There is no ad valorem tax on any of the buildings or equipment used in the broiler operation. I pay $185.00 annually in taxes on the entire farm of 320 acres, of which only 5 acres is devoted to the broiler operation. Therefore, no significant tax expense is attributable to my broiler growing operation.

32

I depreciate my houses for tax purposes over a 20-year period and my equipment over a 10-year period, both on the straight line method. My total depreciation expense for broiler houses and equipment is approximately $800.00 annually.

/s/ MAURICE B. LAYTON

Sworn to and subscribed before me this 8th day of April, 1975.

DORIS TUELOS
Notary Public

My Commission Expires May 16th, 1978

In the United States District Court for the
Northern District of Georgia
Atlanta Division

(Title omitted in printing)

AFFIDAVIT OF ALBERT B. MADDOX

(Filed May 1, 1975)

State of Mississippi
County of Simpson

I, Albert B. Maddox, after first being duly sworn, on oath depose and say:

1

I make this affidavit for use by National Broiler Marketing Association in support of its Motion for Summary Judgment made in this action.

2

I know of my own personal knowledge the facts stated in this affidavit.

3

My residence is Route 1, Box 38, Magee, Mississippi 39111.

4

I am and have been since 1966 a contract broiler grower for McCarty Poultry Farms, Inc.

5

My wife and I own two 15,000 square foot broiler houses having a combined total growout flock capacity of 30,000 chickens per cycle.

6

We built our first house in 1966, and our second house in 1967. The cost of construction and equipment for the first house was approximately $10,000, and for the second house, approximately $12,000. Construction of the houses was financed through the Federal Land Bank and the equipment in my first house was financed by State Guaranty Bank in Magee.

7

Our broiler houses and equipment are fully insured.

8

When we began in 1966, the contract with McCarty had payments based on the Mississippi FOB Dock Equivalent wholesale price and on feed conversion efficiency. Regardless of the market price or feed conversion efficiency, the contract guaranteed payment of 5 cents per bird placed.

9

Our present contract bases payment on a base rate plus or minus a bonus or deduction from the base payment calculated on the basis of my feed conversion efficiency. Regardless of efficiency, however, the present contract guarantees payment of 6½ cents per bird placed.

10

Since 1966, my actual payments from McCarty have averaged between 8 and 11 cents per bird. I received payments averaging about 11 cents per bird in 1973, and about 9½ cents per bird in 1974. The 1974 earnings included a payment at the minimum rate of 6½ cents per bird for a flock placed with us which had to be destroyed in the middle of the growout period because of Dieldrin contamination.

11

We had two-week old chickens in our houses at the time we were notified of the Dieldrin contamination. We fed them until they were five weeks old while the situtation was being investigated, and then they were all destroyed.

12

A few weeks later, at the time the birds would have been picked up at the end of the cycle, we received a check from McCarty Poultry Farms, Inc. in an amount equaling 6½ cents for each bird placed in our houses during the cycle, even though they were destroyed and never sold.

13

We wouldn't have built our broiler houses without knowing that a contract program like McCarty's was available.

14

My farm consists of 125 acres total. Three acres, or maybe four, are used in the broiler operation.

15

I also have hogs and cattle, which I breed and market. The hogs run on about 15 acres, and cattle are on all the rest of the acreage. There is some doubling up, of course.

16

I just about broke even on the cattle last year, and the hogs don't even pay for themselves. The chickens have been feeding the hogs since we've been involved in contract broiler growing.

17

With feed costs going up like they were, the market price came down on cattle. Prices didn't come down on hogs, but there was so much cost in feeding them that you couldn't make any money. We didn't worry about the chickens, of course, because they were on contract.

18

We bear all the risks in the cattle and hog raising.

19

There is no risk at all for us in growing chickens under contract—just the work. If everything else was making us money like the chickens, we would be in good shape. We get a regular income from growing chickens on contract.

20

The 6½ cents minimum payment would cover all of our costs in the chicken operation. When we built our houses, we set up our budget based on the minimum payment, which at that time was 5 cents a bird.

21

Our farming operation couldn't make it without the contract chicken growing. We would have to get off-farm jobs.

22

We get regular placement of chickens from McCarty on a rotating basis. Except for the Dieldrin situation, we had never been out of chickens for more than a month. Even after the Dieldrin loss, we had chickens the next cycle at the regular time, which was about a month from the time the destroyed chickens would have been grown out.

23

In 1973 we settled four flocks with McCarty Poultry Farms, Inc. for a total gross of $13,919.17. In 1974, we settled five flocks, for a total gross of $13,225.08. The 1974 gross included payments for the flock destroyed because of Dieldrin contamination, at the 6½ cent per bird minimum payment.

24

I estimate the annual operating cost in connection with our contract broiler raising operation as follows:

Item	Annual Cost
Fuel (butane gas)	$830.00
Electricity	300.00
Insurance	400.00
Taxes	(None)
House and equipment upkeep and maintenance	500.00
Clean-out of house (hired labor and equipment)	450.00

McCarty Poultry Farms, Inc. furnishes all litter used in our operation.

All expense for water is included in the electricity expense.

25

We are depreciating our broiler houses for tax and bookkeeping purposes over a 10-year period, and the equipment is depreciated over an 8-year period, both on the straight line method. Thus our total depreciation expense for buildings and equipment is now $2,430.04 annually. We will have our buildings and original equipment depreciated down to zero in two or three years.

26

We have never lost money on a flock of chickens grown under contract. I don't know of any way we could lose money, and our only risk is if McCarty goes under and there is no other program.

/s/ ALBERT B. MADDOX

Sworn to and subscribed before me this 8th day of April, 1975.

DORIS TUELOS
Notary Public

My Commission Expires May 16th, 1978.

In the United States District Court for the
Northern District of Georgia
Atlanta Division

(Title omitted in printing)

AFFIDAVIT OF JAMES ARCHIE MARTIN

(Filed May 1, 1975)

State of Georgia
County of Forsyth

I, James Archie Martin, after first being duly sworn, on oath, depose and say:

1

I make this affidavit for use by National Broiler Marketing Association in support of its Motion for Summary Judgment made in this action.

2

I know of my own personal knowledge the facts stated in this affidavit.

3

My residence is Route 1, Cumming, Georgia 30130.

4

I am presently, and have been for two years, a contract broiler grower for A. C. Smith Poultry Company.

5

I started in the chicken business in 1955, when I became a contract broiler grower for Roy Heard. I raised approximately 2,500 birds at a time back then.

6

Roy Heard guarantees me 2 cents per pound, live weight. Without a grower contract, and particularly without the guaranteed payment, I would not have gone into the chicken business. I didn't have the capital or financing necessary to get into the business on my own and, even if I did, I do not think I would have been willing to risk it on chickens.

7

From 1955 until 1960, I rented my chicken houses, and did not own any.

8

In 1960, I built my first chicken house. Roy Heard financed the entire cost of building it, and he was the one who suggested that I build it. If Roy Heard had not suggested that I build one and had not provided the financing for it, I probably would never have built any chicken houses.

9

I built my second house in approximately 1964. I built my third house about three years after I built my second house. I financed the construction and equipping of these two houses through the Federal Land Bank.

10

I paid out each of the loans on my houses in an average of three years.

11

My three houses have a combined capacity of 24,000 birds.

12

I was a contract broiler grower for Roy Heard from 1955 until 1968, when Roy Heard went out of business.

13

When Heard went out of busines, I switched and became a grower with Eldo Grogan.

14

I grew broilers for Eldo Grogan until he went out of business in 1973.

15

When Grogan went out of business, I switched to A. C. Smith Poultry Company. I have been a grower for A. C. Smith Poultry Company since that time.

16

If it were not for integrated producers like Roy Heard, Eldo Grogan and A. C. Smith, I never could have gotten into the broiler business. I would not have gotten into the broiler business, and without them I would not remain in it.

17

If the growout contract was revised to eliminate the guaranteed payment provision I would no longer raise chickens. I need to know in advance what I am going to get at the end of the growout, otherwise I simply couldn't do it.

18

A. C. Smith, like Roy Heard and Eldo Grogan, guarantees me 2 cents per pound. I also can receive feed conversion bonuses if the market price is right and if my feed conversion is good, as it usually is. On the first two flocks I ever grew for A. C. Smith, I received the maximum feed conversion bonuses possible.

19

A. C. Smith also provides me with a fuel allowance of $12.00 per 1,000 birds placed with me and sold between December 15 and May 15. The fuel allowance just about pays my fuel costs for those months.

20

The guaranteed payment of 2 cents a pound covers my costs and pays me for my labor.

21

During the first two weeks of the growout, I put in about three to four hours per day in caring for the chicks. After that, the growout only requires about two hours per day labor. My wife helps me at times, so my personal labor input is even less than the total figures I have just stated.

22

I risk my chicken houses and my labor in growing-out chickens. My houses are insured, so that risk is not big. The labor required during the growout is not great, so I do not consider that risk to be a big one either.

23

A. C. Smith risks his investment in the chickens and all his other equipment. I bet that he has as much invested in a single bunch of chickens as I have in my houses. If the chickens die, A. C. Smith loses, not me. If the market price for chickens drops, A. C Smith loses again; I have my guaranteed payment. If feed costs go up, A. C. Smith loses, not me.

24

Even though two of the producers I grew for went out of business, I have never had any trouble at all getting chickens on contract. I have never had trouble getting chickens from

A. C. Smith. I have always received chickens on a regular basis. With A. C. Smith, I am out of chickens for about two weeks between each flock. I have never been skipped by any of the people I have grown for.

25

I have absolutely no worries about getting chickens, as long as A. C. Smith and other integrated producers stay in business. I could probably switch producers if I wanted to, but I don't want to.

26

I also raise cows; I have approximately 20 head. I have been losing money on the cows for the three years that I have been raising them.

27

I have a 20 acre farm, of which about ¾ of an acre is devoted to growing-out broilers. Most of the farm is devoted to pasture for my cows.

28

Broiler-growing complements cattle raising, since the litter from the broiler growout can be used as fertilizer on my pastures. I have some people who clean out my broiler houses for nothing, just to get the litter. I have them spread a few loads on my pastures, for which they charge me $14.50 per truck load, which is less than they would charge me if it were not my litter in the first place. Regular commercial fertilizer would be much more expensive—it now costs almost $200.00 per ton and pastures usually require about a ton per acre.

29

My contract broiler growing provides me with an income supplement. I work full-time as a hatchery foreman for Roy Heard, who is now an egg producer.

30

My wife worked with ITE in Tucker, Georgia until Christmas, when business got bad and she was laid off.

31

From our full-time employment, my wife and I earned $13,728.00 last year. I only settled four flocks last year with A. C. Smith, but I received contract payments totalling $6,617.00 for them. I settle an average of 4.5 flocks each year.

32

My 1974 expenses in connection with my broiler growing operation were as follows:

Item	Annual Cost
Fuel	$1,739.00
Electricity	240.00
Insurance	254.00
House and equipment upkeep and maintenance	680.00
Interest	120.00
Shavings	270.00
Gravel	160.00
Book work	10.00
Taxes	308.00

All water expenses are included in the electricity expense. The tax figure represents all property and ad valorem taxes on my entire 20 acre farm.

The shavings expense is recovered by my saving on labor during the cleanout of my houses, since people will clean them out at no cost to me just to get the litter. The shavings cost is also recovered because those people will sell me a portion of the litter they clean out at a price less than they charge other people because it came from my houses.

33

For tax and bookkeeping purposes, I depreciate my chicken houses on the straight line method over a period of either 10 or 15 years. I depreciate most of the equipment used in the houses over a 10 year period, again using the straight line method. Some equipment items are depreciated over periods of 2, 4 or 5 years using the straight line method. For 1974, my total depreciation expense related to my broiler growing activities was $1,801.00.

/s/ JAMES ARCHIE MARTIN

Sworn to and subscribed before me this 25 day of April, 1975.

MARY CASTLEBERRY
Notary Public

Notary Public, County of Forsyth
State of Georgia
My Commission expires 8-10-76

In the United States District Court for the
Northern District of Georgia
Atlanta Division

(Title omitted in printing)

AFFIDAVIT OF LeROY EMERSON MAYFIELD

(Filed May 1, 1975)

State of Georgia
County of Forsyth

I, LeRoy Emerson Mayfield, after first being duly sworn, on oath depose and say:

1

I make this affidavit for use by National Broiler Marketing Association in support of its Motion for Summary Judgment in this action.

2

I know of my own personal knowledge the facts stated in this affidavit.

3

My residence is Route 7, Cumming, Georgia, 30130.

4

I am presently, and have been for almost four years, a contract broiler grower for A. C. Smith Poultry Company.

5

I first started raising chickens approximately 35 years ago. For the first 10 years, I raised them on my own, not as a contract grower. I would buy 300 broiler chicks at a time, and I would also purchase all the feed and medications the chickens required. I would sell them to a fellow from Gainesville, Georgia who would pay me several cents per pound less than the prevailing wholesale market price for chickens in the Gainesville area.

6

I made a little money during the 10 years I raised chickens on my own, but there were many times when I lost badly. I lost money during the last two years that I grew on my own. Lots of other people I knew lost money in the broiler business at about the same time. Many people who were growing chickens on their own actually lost their farms because they simply couldn't pay their bills; their chicken raising was not generating any income for them.

7

After growing chickens on my own for 10 years and after losing money for two consecutive years, I stopped raising my own chickens and became a contract broiler grower for the Heards.

8

I became a contract grower for two reasons. First, as a contract grower, I received a guaranteed payment per pound, so I knew in advance what my minimum return would be. This guaranteed payment was very attractive compared to the times I raised on my own, never knowing whether I would make a nickel until I sold my chickens to the man in Gainesville. The second reason I became a contract grower was that I could growout more chickens that I could purchase and feed on my own, since the Heards, not me, had to pay for the larger number of chickens placed with me under contract and they also had to absorb all costs of feed and medicine for the birds.

9

Shortly after becoming a contract grower, I stopped contract growing because I had to serve in the Army. I got out of the Army in 1953 and continued to raise for the Heards for another 5 or 6 years, until approximately 1959.

10

In approximately 1959, I had an opportunity to go to work for a construction contractor and I quit growing broilers for the Heards. I stayed out of the chicken business for approximately two years.

11

In 1961, eggs were bringing a very good price. So, I quit working for the contractor and decided to try my hand at the hen and egg business, once again going out on my own with my own hens and my own feed bills.

12

I went into the egg business rather than returning to the broiler business because I could bring eggs to the market and be paid once every week, unlike the broiler business where, either as a grower or on my own, I would get paid with every flock rather than every week.

13

I raised hens and sold eggs from approximately 1961 to 1969.

14

I made some money during the eight years I was in the egg business. I lost money continually, however, during the last year of my egg business. The market for eggs had declined while feed costs had gone up. I had to sell 15 acres of my farm in order to get enough money to pay my feed bills. To put it simply, I lost my shirt that last year.

15

From 1969 to 1971, I was out of the poultry business entirely, working for other people.

16

In July, 1971, I became a contract grower for A. C. Smith Poultry Company. I have been growing for A. C. Smith under contract ever since.

17

I regularly get chickens to growout. I settle 4 or 5 flocks per year. The average time between flocks is approximately 10 to 14 days. If the time between flocks does run longer than 14 days, it is usually because I have asked A. C. Smith to hold off putting birds into my houses, either because I was sick or had to be out of town.

18

The 10 to 14 day period between flocks represents, with a little leeway, the approximate amount of time it takes for me to get my houses ready for a new flock after the grown-out flock has been removed by A. C. Smith's people. I am not saying that it takes 10 to 14 days of full-time work to ready the houses, but it does take that long given the amount of time I have available for the task.

19

When I raised broiler chickens on my own, I would only be able to sell about 3 or 4 flocks per year; it would take 12 weeks to raise them back then. Now it only takes 7 to 8 weeks and I settle more flocks per year with A. C. Smith.

20

When I was growing chickens on my own, I often ended up selling about half of the broilers I started out with. This isn't the case anymore, so I can pretty well figure what my growout payment will gross me, since I don't lose many birds during the growout.

21

I have two chicken houses, with a combined capacity of 15,000 broilers.

22

Half of one of my chicken houses was built in approximately 1951. I added on to it in 1967. I built the second chicken house in 1972, but only after A. C. Smith assured me that he would place his chickens in the new house.

23

Each time I built or added to the chicken houses, I borrowed the money I needed to build them from the Production Credit

Administration. I paid out the loan for the 1967 addition in approximately 1971. I paid out the loan for the house I built in 1972 toward the end of 1973.

24

My farm used to have 40 acres, until I had to sell 15 to cover my losses from my egg business. Out of the 24.8 acres I now have, I would say no more than one-half acre is devoted to broiler growing. Both houses are located in a pasture, and my cattle graze right up to the edge of the houses.

25

As long as I do a good job for A. C. Smith, I know that I will get chickens to grow out. I have no fears about not getting broilers to grow out. I could also switch from A. C. Smith if I wanted to. For example, I was approached by a person representing J&M about 6 weeks ago, who wanted to know if I would like to grow broilers for them.

26

A. C. Smith guarantees me a payment of 2 cents per pound, liveweight. I also receive feed conversion bonuses, if the market price is above a certain level and if my feed conversion ratios meet certain standards.

27

A. C. Smith also pays me a fuel allowance. On the last two flocks we settled, I received a total of $360.00 in fuel allowances.

28

I have never lost money as a contract grower. Contract broiler growing helps me to stay on my farm; if it weren't for the contract payments, I couldn't remain here. I could make more money somewhere else, but I really like staying on the farm.

29

I do not think that I would grow chickens at all if the contracts did not guarantee me a minimum payment. I would probably quit growing without the guaranteed payment. What with the price of chickens these days, I am sure the producer is not making anything, so I am happy to get my guaranteed payment.

30

If I didn't have the guaranteed payment, I'd be getting the light bill, the phone bill and all the other bills we all get without knowing whether or not I would be making a nickel on the broilers. I just couldn't take those risks.

31

The only risks I do take involve my chicken houses and my labor. My chicken houses are partially insured, so that risk is not great. So, all I really risk is my labor.

32

If the chickens in my houses die, A. C. Smith loses all the money he has tied up in those chickens. All I would lose would be the labor I had put into caring for that particular flock.

33

The labor required to grow out chickens only approaches a full-time proposition during the first two weeks of each new flock. During those first two weeks, the chicks require a lot of attention. During the last five weeks of the growout, only about three hours per day of labor is required. My wife and my children help me to take care of them, checking the feeders and adjusting the ventilation, and things like that.

34

A. C. Smith makes the big investment here. The labor I risk in each flock is not that great and my chicken houses are partially insured. I paid out all my loans on my chicken houses in less than 4 years each time, but I expect that the houses will last at least 15 years. If anyone is looking at the investment made in producing broilers, he should look at A. C. Smith, not me.

35

In addition to my poultry activities, I have been a cattle trader almost all of my life. Growing-out broilers fits in very well with my cattle trading, since growing-out broilers leaves me enough time to travel around trading cattle during the day.

36

In addition to any cattle I may have available for trading at any particular time, I also have what I call "keeping" cattle, which I raise for market and for my own use.

37

Unlike the broilers, I own both my keeping cattle and my trading cattle and I have to purchase the necessary feed and other supplies for them. The cattle business was very bad last year. I only grossed $1,000.00 from my trading activities and $1,425.00 from sales of my keeping cattle. This latter figure does not include the value of any cattle I slaughtered for my family's eating. I made a lot more in the cattle business in 1973.

38

My broiler growing really benefits my cattle activities in an important way. While A. C. Smith Poultry Company generally recommends an annual cleanout of the litter in the chicken houses, I clean some out after every flock, and clean the houses to the ground once a year. I use this broiler litter on my pastures instead of fertilizer. Last year, I paid $345.00 for shavings and $461.00 for hired labor and equipment to clean out the houses. I recovered these costs and more by using the litter on my pastures, since I figure an equivalent fertilizer would cost about

$190.00 per ton or approximately $3,800.00 for a farm the size of mine.

39

In 1974, I settled 5 flocks with A. C. Smith and I received gross payments totalling $6,925.84.

40

My 1974 expenses in connection with my broiler growing operation were as follows:

Item	Annual Cost
Fuel	$703.91
Electricity	300.00
Insurance	112.00
House and equipment upkeep and maintenance	313.62
Hired labor	461.00
Shavings (litter)	345.00
Taxes	170.53

All water expenses are included in the electricity expense. The tax figure represents property and ad valorem taxes on my entire farm, not just the one-half acre devoted to broiler growout.

The shavings and hired labor expenses are totally offset by the value of the litter as fertilizer for my pastures.

The fuel figure is probably high, since I entered 1975 with a large amount of fuel in my storage tanks. The fuel figure will vary from year to year, depending upon when I last fill my tank in each year.

41

For tax and bookkeeping purposes, I depreciate my broiler houses over 15 years using the straight line method. I am depreciating various pieces of equipment in each of the houses over periods of 8, 6 and 4 years using the straight line method. I am depreciating a new feeder motor over a 5 year period using the double declining balance method. My total depreciation expense for assets connected with my broiler growout activities was $1,129.56 in 1974.

/s/ LEROY EMERSON MAYFIELD

Sworn to and subscribed before me this 25 day of April, 1975.

MARY CASTLEBERRY
Notary Public
County of Forsyth
State of Georgia

My commission expires August 10, 1976.

In the United States District Court for the
Northern District of Georgia
Atlanta Division

(Title omitted in printing)

AFFIDAVIT OF H. F. McCARTY, JR.

(Filed May 1, 1975)

State of Mississippi
County of Simpson

I, H. F. McCarty, Jr., after first being duly sworn, on oath depose and say as follows:

1

I make this affidavit for use by National Broiler Marketing Association in support of its motion for summary judgment filed in this action.

2

I know of my own personal knowledge the facts stated in this affidavit.

3

I am President of McCarty Poultry Farms, and McCarty Hatcheries, Inc., located in Magee, Mississippi. My family also owns a substantial interest in State Poultry Company which processes and markets the live bird production of McCarty Poultry Farms, Inc. under a profit and loss sharing contractual arrangement with McCarty Poultry Farms, Inc. Our operation (known and hereinafter referred to as McCarty Enterprises) is an integrated producer of broilers. McCarty Poultry Farms, Inc. is a member of National Broiler Marketing Association.

4

In the fall of 1949 I bought a chick hatchery from my father's estate; at that time the hatchery sold about 3,500 chicks twice a week.

5

I began to find that most of my chick customers were beginning to get chicks from other sources to raise on contract without having to buy them, so I started putting birds out in self-defense. I charged the grower for feed, chicks, and medication, and sold the birds for them. Under this arrangement the grower was standing the market risk. This situation lasted no more than three or four years.

6

The contract grower system, as we know it now, began to develop in the early fifties in our region because in some cases the man with the baby chicks couldn't get a grower to put the birds out because the grower could not, or would not, take the market risk.

7

The contract system works because the integrator is in the market over a 12-month period and can average out the highs and lows in the market, which fluctuates considerably. The grower cannot raise more than four or five flocks a year and thus cannot average the highs and lows. I remember in particular a grower who lost money on five flocks in a row and could not pay for his feed and chicks. You don't sue a man who can't pay.

8

In the first three or four years I was buying hatching eggs from North Carolina, since we thought you couldn't produce them in Mississippi because of the temperature. We were also buying our feed from someone else at that time, but then we moved from a complete feed to a concentrated program and began buying corn from the midwest. We built a feed mill, and began producing our own feed.

9

In the early days we were selling live birds to individual processors in New Orleans and Jackson. We were depending on the Market News Service of USDA, which reported a Georgia live price, for our market information.

10

The initiative to move into broiler production worked on my operation from two directions. In 1948 and 1949 growers came to me asking me to place chickens with them. At the same time feed companies were also trying to interest us in growing chickens, in order, of course, to sell their feed.

11

We purchase baby chicks for our breeder flocks from primary breeders. We purchase and own the breeder flocks and all of the necessary feed and medication for the breeders. All of the pullets and cockerels are grown on company-owned growing farms. Thirty-five to forty percent of our breeder hens are kept on farms which we own. The remainder are placed with growers under contract.

12

We hatch the eggs produced from the breeder flocks in our hatchery and place the broiler chicks with our growers under contract. We have approximately 130 growers.

13

The grower wanted to raise chickens because it gave him an income and an ability to stay on the farm. In our area cotton and watermelons had long been grown on small farms, but they were no longer profitable. Broilers were good in poor farm areas, such as ours, but not in rich farm areas. For example, they floundered in the delta region of Mississippi. At the same time ordinary farmers did not have the capital to take the market risk of production, to invest in feed and chicks, and to coordinate their production and marketing.

14

As a consequence, we have integrated our operation so that now, and since the 1950's, we have produced broilers through an integrated operation which involves the placement, raising and breeding of breeder flocks to produce eggs to be hatched as broiler chicks; the hatching of broiler eggs and placement of broiler chicks; the raising of broiler chicks for a period of seven to nine weeks; the catching, cooping and hauling the grow-out broiler chicks to processing facilities; and the operation of facilities to process and prepare ready-to-cook (RTC) broilers for market.

15

Since the 1950's, our growers have been under contract. The contract did have a market price feature, but this feature was discontinued in 1972 or 1973 when the cost of feed and the price of chickens both went through the ceiling. The market feature was not related to the spread between feed costs and market price and so therefore it became unfair. Since that time our contract has been changed so that the grower's base payment is based on the standard of feed conversion. We average the feed conversion obtained by growers over a three week period—the week before, the week of, and the week after the flock is taken to the processing plant. A grower who comes within five points plus or minus the average gets the base payment. We do, of course, guarantee a minimum payment of 6½ cents a bird regardless of feed conversion or the price we get for the broilers.

16

In early 1973 with the increased price of butane we made an upward adjustment of approximately 5% in the contract. Again in the fall of 1973 we increased the base grower payment from 2¼ cents to 2¾ cents per pound, and made that increase retroactive to February, 1973. This involved retroactive payments to our growers in the total amount of $187,172.02.

17

For years we have guaranteed a grower at least five cents a bird placed and for the last two or three years our guaranty has been 6½ cents a bird, whatever the grower's feed conversion rates might be. We pay the grower for the chickens on the basis of the number of birds placed, even if his house and the whole flock burns up. We encourage our growers to insure their chicken houses against fire and 65 to 70% of our growers in fact do carry insurance against fire and other hazards. We have never had a situation where we have lost an entire flock placed with a grower because of disease.

18

Our growers have never lost money. Our contract is more than a "no-loss" contract. It is a guarantee of a profit for the average grower.

19

We have a philosophy that no grower should be cut off. If we take anybody on as a grower we have an obligation to him. If he is not performing, it's our fault. We have had to terminate only four growers at our initiative in the last five years, and that was for continuing failure to perform according to our program.

20

In March of 1973, we were required to destroy about 2,250,000 of our broilers, which we had placed with growers, because they were discovered by the United States Department of Agriculture to contain Dieldrin in small amounts exceeding the maximum allowable tolerance. Dieldrin is a pesticide which is sometimes used on corn and soybeans and other feed ingredients.

21

The Dieldrin situation came about in this way. For a considerable period of time, USDA and the Food and Drug Administration had been monitoring poultry processing plants in Mississippi on a periodic basis.

22

Early in January, 1974, USDA ran across a situation in a processing plant in northern Mississippi where hens were found to have more than the allowable tolerance of Dieldrin. Following this discovery USDA began an intense check and in February discovered traces of Dieldrin in some broilers. USDA then zeroed in on all plants in Mississippi, and in March found traces of Dieldrin in five plants. On March 18th they found it in ours. USDA seized the product and it couldn't be sold. The only alternative was to destroy processed and live birds—all of which had to be buried. The source of the Dieldrin was traced to some vegetable fat we had used in our feed. This vegetable fat was concentrated soybean oil. Apparently the Dieldrin residue gets more concentrated as the oil gets refined.

23

We were out of production from March 18 until May 1. As I stated above, we were required to destroy almost 2¼ million broilers we had placed with growers. Some of these birds had only grown for three weeks. We paid all the growers 6½ cents for each bird placed. We would have paid the growers an average of 2¾ cents a pound per bird had the birds grown to full size. To the extent of the difference the growers lost an expected profit because of the Dieldrin contamination. If we collect on our products liability suit against our supplier, however, we will in fact pay to the growers the 2¾ cents a pound they otherwise would have received but for the Dieldrin contamination. On the other hand, in contrast to the growers, our entire operation lost a grand total of $1,609,285 as a result of the Dieldrin contamination. Except for some anticipated profit, our growers lost nothing.

24

We work very closely with our growers, and of course we supervise them in the raising of the broilers. We also assist and advise them with respect to the construction and purchase of broiler houses and equipment. For instance, in 1973 we began working with power ventilation which involves insulating the roof of the broiler house and adding fans and thermostats. While this costs some 10 or 11 cents a square foot, it allows the grower to increase the capacity of the house by approximately one-third and thus recover his additional investment in less than two years. We have converted quite a few of our broiler houses to power ventilation.

25

Typically our growers involve a husband and wife situation. Frequently, in addition to growing broilers our growers also graze cattle on the balance of their land. They use the litter (we supply the shavings at no cost to the grower) from the broiler houses as fertilizer for their pastures.

26

We also have numerous situations where investors build broiler houses, equip them and use hired labor to raise the broilers.

27

It is my impression that the net income of our growers is higher than the income earned by those doing comparable work in factories in our area. A man with a job at a nearby factory making $2.50 to $3.00 an hour in my estimation does not generally have a home or automobile comparable to that of our broiler growers, who also have the advantage of being able to live on a farm. A grower is not required to be a businessman, nor are there educational requirements. We furnish all of the supervision, and take all of the market risks. Primarily, to be successful, a grower has to be willing to follow our instructions.

28

The McCarty Enterprises complex makes all of the decisions with respect to both production and marketing of the broilers we produce.

29

Under our grower contract the grower provides the housing for the birds and equipment for feed and watering, plus electricity, water and heating fuel.

30

We own and bear the risk of loss of all feed, medicines, vaccines and most other supplies essential to the production of a marketable broiler.

31

As evidenced by the Dieldrin situation our integrated operation, and not the contract grower, owns the broiler "crop" or flock and bears the risk of its loss from disease, natural disaster, feed contamination or any other cause. We own and bear the risk of loss of the broiler chickens at all times during production including the growout phase.

32

We have a substantial investment in land, buildings and equipment devoted to the production of broilers from the breeder flock stage through the processing and marketing stage.

33

In our operation we face both production and market risks, and we risk an investment in our breeder flock, our hatchery, our feed mill, feed and feed ingredients, various supplies, transportation and processing facilities and all labor necessary to prepare the RTC broiler for market.

34

The only phase of broiler production which requires any investment by the contract broiler grower is the broiler "grow out" phase. The contract grower's risk of investment in broiler production is limited to the value of his investment in the facilities (land, buildings and equipment) and services used in the growout phase. As stated above, the grower's risk of loss of his buildings and equipment is insurable and 60 to 70% of our growers do in fact have such insurance.

35

The only farm land owned by individual growers which is devoted to the raising of broilers is the land underlying the grower's broiler houses and the area required for a roadway to the houses. Our average grower has a housing capacity of approximately 33,000 birds, which requires no more than 4 or 5 acres.

36

Between 85 and 90% of our live bird cost of producing broilers is accounted for by inputs which we supply, including feed, chicks, medications, veterinary supplies and services, growout supervision, and labor for catching, cooping and hauling.

37

More than half of the live bird cost of producing broilers is accounted for by the cost of feed. McCarty Enterprises purchases feed ingredients on the open market and bears the risk of fluctuation in the cost of feed due to market conditions.

38

McCarty Enterprises sells broilers on the open market, has no guarantee of any return at all for its broilers and therefore we risk all of our investment in the production and marketing of broilers. Our growers, on the other hand, are guaranteed payment regardless of costs or prices.

39

We operate at full production only 18 to 20 weeks out of the year. During that time of the year, our growers do not have

more than 10 to 12 days between bunches. Around Thanksgiving and Christmas, when consumption of broilers is down, our production will decrease and during that time the longest period between bunches of chickens may be five weeks. When we decrease production in this manner, we spread our chick placements equally across the board and each grower receives his next flock in sequence. All growers will average 4½ flocks annually.

40

Integrated broiler production in our area of Mississippi has enabled growers to remain on farms by assuring them a steady income. Our growers have found that with broilers they could stay on the farm where otherwise they could not do so.

41

The most significant production decisions relative to the number of birds to be ready for slaughter during a given week are those which determine the number of breeder chicks to be placed and raised as breeder hens and cockerels. The number of breeders placed at a given time generally determines the number of broilers available for slaughter 12 to 18 months later. McCarty Enterprises makes the decision determining the number of breeder chicks to be placed.

42

After breeders are placed, the next significant production decision relative to the number of birds to be ready for slaughter during a given week is the decision which determines the number of broiler eggs which will be hatched and readied for placement as day-old chicks. The number of eggs set in our hatchery determines the number of day-old chicks available for placement 3 weeks later, and therefore determines the number of broilers which will be available for slaughter 10 or 12 weeks after the eggs are set. Again McCarty Enterprises makes the decision determining the number of broiler eggs to be hatched.

43

The final opportunity to offset the number of birds ready for slaughter during a given week comes at the time broiler chicks are placed. Chick placements determine the number of birds which will be ready for slaughter 7 to 9 weeks after placement.

44

Any decision to adjust production downward after breeder chicks are placed must be made at the cost of the investment at the time of decision in the breeder hen, broiler egg and/or broiler chick, which is investment which is largely unretrievable unless the broilers can be sold during the week they are ready for slaughter.

45

When we make our production decisions, we do so with no knowledge of the demand which will exist for the product when it reaches marketable age, except for historical patterns and trends.

46

So much of present demand is affected by reduced consumer income that I am concerned now about how valid past trends are in today's economy. For instance, the demand of take-out stores is now sharply reduced. Takeout demand is a very real factor in the market and is directly affected by reduced consumer income.

47

Consumer demand for broilers fluctuates from week to week, with peaks and valleys in demand occurring in connection with, among other things, holidays and seasons of the year. However, at a given week, historical patterns and trends in demand may be modified by a variety of factors, many of which cannot be anticipated. For example, changes in weather conditions can affect our rate of broiler growth, and can also modify consumer demand in the market.

48

Because of the very limited shelf life of broilers sold fresh, all of our production must be sold within a maximum of 4 days from the time of slaughter. We must sell our products quickly and our customers demand a bird approximately 2¾ pounds, dressed weight. If birds back up in the field, and get over the desired weight, there is no question but that you have to sell these heavy birds at a discount because of their weight.

49

A further difficulty facing the integrated broiler operation such as ours comes from the fact that the bulk of our feed is delivered against payment by sight draft. On the other hand, we sell RTC broilers on a 14-40 day payment basis. This of course requires a substantial investment to finance accounts receivable and there is no way that a grower could cope with that sort of situation. The credit risk assumed by the broiler integrator is evidenced by the situation a year or so ago when Crenshaw Poultry on the west coast went bankrupt, costing the industry some one million dollars from failure to pay for chickens previously delivered. This bankruptcy took $27,000 to $30,000 from McCarty Enterprises.

50

Short run demand for broilers is strongly influenced by merchandising policies of our retail customers. Chicken specials, for example, sometimes doubles demand during the week of the special, but greatly reduces demand during weeks when chickens go off special.

51

Every broiler producer I know of operates in essentially the same way we do, owning or otherwise controlling hatching egg production, a hatchery, a feed mill or feed supply, contract growout of broilers and breeders, trucks and equipment for transporting chicks, feed and live broiler chickens and facilities for processing and marketing. Just about all broiler production today is carried on in this way by integrated producers.

/s/ H. F. McCARTY, JR.

Sworn to and subscribed before me this 28th day of April, 1975.

DORIS TUELOS
Notary Public

My Commission Expires May 16th, 1978

In the United States District Court for the Northern District of Georgia, Atlanta Division

(Title omitted in printing)

AFFIDAVIT OF WILLIAM T. O'NEAL

(Filed May 1, 1975)

State of Georgia
County of Rabun

I, William T. O'Neal, after first being duly sworn, on oath depose and say:

1

I make this affidavit for use by National Broiler Marketing Association in support of its Motion for Summary Judgment made in this action.

2

I know of my own personal knowledge the facts stated in this affidavit.

3

My residence is Route 1, Box 215, Tiger, Georgia.

4

I am and have been since 1955 a contract broiler grower for Tom and Lee Arrendale, whose integrated broiler operation is now owned and operated as Fieldale Corporation.

5

I own and presently operate a 12,000 square foot broiler house, which will accommodate 15,000 to 16,000 birds per growout cycle.

6

Construction of my present house was completed in December, 1963. The construction cost was $8,153.00, and the equipment in the house cost a total of $4,780.71.

7

I built my first house in 1955 at a cost of $4,500.00. The capacity of that house is approximately 8,500. The old house has not been in use for the past three years, because a tornado took the roof off. The insurance took care of the loss, however, and I am repairing the house now for use this summer.

8

At the time I built my old house in 1955, I also began managing the cafeteria at the Clayton Elementary School. I have continued to manage the school cafeteria ever since that time. My salary from the Board of Education in 1974 was approximately $3,900.00.

9

In 1955, Tom and Lee Arrendale were operating Arrendale's Feed Store, and had a contract broiler growing program. In the early spring of the year, I went to see them to discuss the prospect of growing chickens for them. Tom Arrendale told me to go ahead and build the house, and he would give me a contract.

10

The equipment for my first house was selected and purchased for me by the Arrendales, and I believe they also helped install it. I paid the Arrendales for the equipment over a one year period.

11

During the 1950's and early 1960's, it took 10 to 11 weeks to grow out a flock of broiler chickens, and I would settle 3 or 4 flocks a year.

12

It now takes 7 to 8 weeks to grow out the birds, and I have been settling either 4 or 5 flocks a year for the last few years.

13

I built my new house in 1963 while the Arrendales' operation was owned by Ralston-Purina. The new house is a windowless, fan-ventilated house which was built on the Purina building program.

14

Under the Purina program, I was allowed credit of up to $5,000.00 for 90 days to purchase the equipment for the new house. At the end of 90 days, I borrowed the money to pay off the equipment from Mr. Arrendale's bank, the Bank of Habersham, and Tom Arrendale signed the note for me. The note was for a 7 year term.

15

Under my contract with Fieldale, I furnish the house, equipment, shavings (litter), labor, electricity, water and fuel. Fieldale puts in their chickens, and supplies all feed, medication, vaccines, and other health supplies, veterinary services, transportation, and labor and equipment for catching, cooping, loading and hauling the live birds to the processing plant.

16

The labor for our growout operation is a family affair, and my wife and I together perform all the labor.

17

There is no expense for water. We have a well, and the only expense connected with watering the chickens is the electric pump, which is included in with the electricity expense.

18

We hire some labor to clean out the chicken house at the end of each batch of chickens. We get that expense back, however, because we spread the litter on our pastures and it is worth more as fertilizer than the cost of what we pay for the shavings and what we pay for the cleanout combined.

19

My total farm consists of 141 acres, in one lot of 127 acres and another lot of 14 acres.

20

The land tied up by the two broiler houses is no more than 3 acres, including the land under the houses, some land around the houses, and the road necessary for the feed truck and pickup truck to get from the highway to the houses.

21

I grazed cattle on approximately 36 acres, and the remainder of my farm is in timber. I currently have 21 head of beef cattle.

22

The timber is commercial timber—about 15,000 white pines which I set out.

23

In my broiler growing operation, I have been on contract since the beginning.

24

My contract, first with the Arrendales, then with Ralston-Purina, and now with Fieldale, has always included a minimum guarantee.

25

I began in 1955 with a guarantee of 6 cents a head ($60.00 per 1,000), and I have always been paid more than the minimum.

26

In 1947 and 1948, I grew about 100 head or so of chickens on my own, and tried to market them myself. After buying the chicks, feeding them and raising them, my wife and I dressed them in the kitchen and sold them directly to consumers. We only tried raising chickens on our own for a year or two, and then quit, because you can't make any money doing that.

27

There is no way in the world I could grow chickens without a contract. I haven't got the capital, and I couldn't be in the business at all if the contractor didn't have the market.

28

As far as being a chicken farmer, I'm not. A farmer is always looking for a way to market. I'm not worried with that—that's their worry. All I've ever been is a grower on contract.

29

It has always been my understanding that I am guaranteed my payment, and that the contractor will take any loss.

30

I remember times when I was paid 6 cents or more a head for the chickens, and it was obvious to me from the cost of feed alone that the Arrendales were selling the broilers at a substantial loss. Nevertheless, I have always been paid well.

31

I have always made money growing chickens on contract. The only way I could not make money would be if the house were destroyed and the flock with it. In that situation, my insurance would cover the house and the equipment and all I would lose would be the labor up to that point.

32

In that same situation, Fieldale would lose its chickens, its feed, the medicines, vaccines and other supplies and its own labor and efforts in placing the flock and supervising.

33

I have always gotten regular placements, and I feel like I always will as long as I want them.

34

Under the present contract arrangement, I am paid on the basis of my cost of production efficiency within a range of 2.6 cents a pound and 3.6 cents a pound. The contract guarantees me a minimum of 2.6 cents per pound of broilers delivered to the plant, regardless of cost or efficiency, and my payment does not depend on market price.

35

In 1974, I settled 5 flocks with Fieldale, for a total gross payment of $8,437.56.

36

My estimated operating costs during 1974 in connection with broiler raising under contract to Fieldale was as follows:

Item	**Annual Cost**
Fuel	$815.87
Electricity	277.47
Insurance	143.00
House and equipment upkeep and maintenance	150.00
Taxes	87.41

All water expense is included in the electricity expense.

I paid approximately $600.00 for shaving (litter) during 1974, and also paid a total of $420.00 during the year for house cleanup after each flock. However, the litter removed after each flock was spread on my pasture, and the fertilizer value was at least the total of these two expenses.

The tax expense includes $76.91 ad valorem tax on the houses and equipment, and $10.50 estimated property tax. The total tax on the 127 acre tract which includes the broiler houses was $436.27, and only about 3 acres is tied up in broiler growing.

37

My 12,000 square foot house in which all broilers grown for Fieldale in 1974 were housed is being depreciated for tax purposes over a period of 15 years, at the rate of $542.00 a year. The equipment in that house was depreciated over a 3 year at the rate of $523.00 a year, and is already depreciated out. My 8,000 square foot house, which I have not used for the past 3 years, but which I will be using this summer, is being depreciated over a 20 year period at the rate of $225.00 a year. Thus my total depreciation expense for broiler houses and equipment in 1974 for tax and bookkeeping purposes was $767.00 including depreciation on the unused house.

/s/ William T. O'Neal

Sworn to and subscribed before me this 23rd day of April, 1975.

(Illegible)
Notary Public
My Commission Expires July 7, 1979.

In the United States District Court for the Northern District of Georgia, Atlanta Division

(Title omitted in printing)

AFFIDAVIT OF A. C. SMITH

(Filed May 1, 1975)

State of Georgia
County of Forsyth

I, A. C. Smith, after first being duly sworn, on oath, depose and say:

1

I make this affidavit for use by National Broiler Marketing Association in support of its Motion for Summary Judgment made in this action.

2

I know of my own personal knowledge the facts stated in this affidavit.

3

My residence is Route 3, Cumming, Georgia, 30130.

4

I am the principal partner and chief executive officer of A. C. Smith Poultry Company, a Georgia partnership with its offices located at Silver City, Georgia. The other members of the partnership are my sons and daughter.

5

A. C. Smith Poultry Company is a member of Mar-Jac, Inc., an agricultural cooperative organized and existing under the Georgia Cooperative Marketing Act, whose members are integrated producers of broilers.

6

Mar-Jac, Inc. is a member of National Broiler Marketing Association. I am a director and one of the founders of National Broiler Marketing Association.

7

During 1967 I served as President of the Southeastern Poultry & Egg Association, an association of broiler and egg producers located throughout the southeastern United States. During 1971-1972, I was Chairman of the Board of National Broiler Council, a nationwide organization of broiler producers, headquartered in Washington, D.C. I have general knowledge about the development of broiler production and current broiler practices in the United States.

8

I have been involved in broiler production since my father built a chicken house in Forsyth County in 1932. The house built in 1932 had a capacity of 500 chickens. Chicks were purchased from a hatchery located outside of Georgia, and my father purchased the feed ingredients from a feed dealer in Gainesville, Georgia. My mother and I took care of the chickens, and we mixed the feed ingredients in a wheelbarrow.

9

With respect to the chickens we raised, my family had the risk of selling the grown out birds in a fluctuating market, and also the risk of losing the chickens and our investment in chicks and feed. In the 1930's, we were lucky if we marketed one-half of the birds we started out with.

10

At the time we started growing chickens, my father was in the general merchandise business. In 1938 he became a feed dealer and entered into broiler production by contracting with other growers. My father was the second feed dealer in Georgia to enter contract productions; Jessee Jewell was the first.

11

Even in 1938, growers were generally unwilling to build broiler houses without a contract, and were unwilling to bear the marketing risks, which the feed dealers assumed under the contract arrangement.

12

I started in the broiler business for myself after I was discharged from the service in December, 1945.

13

In the early days of my business, I purchased feed from Purina or Pillsbury, and day-old broiler chicks from Chemell or Hall Brothers Hatchery.

14

I placed the chicks with growers for feeding under contract, and at the end of the growout period I collected the chickens and sold them to a processor.

15

My broilers are now and always have been raised by growers under contract, and I have always guaranteed my growers a minimum payment adequate to protect them against any loss. The guaranteed minimum when I began production in 1946 was $50.00 per 1,000 birds placed.

16

In 1947, I built a hatchery which I now own and operate as A. C. Smith Hatcheries, Inc. All broiler chicks placed by A. C. Smith Poultry Company are supplied by A. C. Smith Hatcheries, Inc.

17

The breeder flocks, which supply the hatchery with eggs, are owned and controlled by A. C. Smith Poultry Company.

18

A. C. Smith Poultry Company purchases day-old cockerel and pullet chicks from primary breeders and places them on a starter farm owned by a contract grower. This grower raises all our breeder chicks to an age of 5 or 6 weeks.

19

After 5 or 6 weeks, the breeder chicks are transferred to a growout farm, which is owned by A. C. Smith Poultry, Inc. The breeder growout farm is operated by a grower employed by A. C. Smith Poultry Company.

20

The breeders are raised on the growout farm to an age of 14 to 18 weeks, and then placed in breeder houses on 6 breeder farms owned by A. C. Smith Poultry Company, Inc. The breeders are maintained on these breeder farms throughout the productive period of lay for the hens, which is approximately 9 months. The breeder farms are operated by employees of A. C. Smith Poultry Company, Inc.

21

It is important for the integrator to maintain close control over his breeder operation in order to produce high quality chicks, because the quality of chicks is one of the most important factors in determining the quality of the broiler produced and marketed by the integrator. All integrated broiler producing operations of which I have knowledge own and control their own hatcheries and breeder flocks.

22

In 1949, I purchased a feed mill, which I operated as A. C. Smith Milling Company until 1966. The A. C. Smith Milling Company feed mill supplied all feed used in my integrated broiler operation, including both the hatchery supply flock and the growout operation, until 1966.

23

Since 1966, all feed used in my integrated broiler operation has been and is supplied by a feed mill owned and operated by HFC, Inc., a cooperative of agricultural producers owned and operated by the members of Mar-Jac, Inc.

24

Mar-Jac, Inc., a cooperative of which A. C. Smith Poultry Company is a member, owns and operates the processing facilities through which the live bird production of A. C. Smith Poultry Company is processed and marketed.

25

In our integrated broiler operation, A. C. Smith Poultry Company, either directly, by common ownership of A. C. Smith Hatcheries, Inc., or by membership in the Mar-Jac cooperative, raises the breeder chicks and produces the eggs which are hatched into broiler chicks; owns the broiler chick hatchery; owns the broiler chickens at all stages of production, including the growout period during which the chickens are cared for by contract growers; owns all feed and controls the mixture and content of feed used in growing out the broiler chickens; supplies and pays for all medications, vaccines, health supplies and veterinary services; makes all decisions with respect to the number of chicks to place, the length of the grow-out period, and the weight and size at which the broilers are to be marketed; supplies all transportation and catching, cooping and hauling labor; processes the chickens into ready-to-cook (RTC) broiler form; and bears the risk of selling the RTC broiler, a perishable product, on the open market.

26

The growers who raise A. C. Smith Poultry Company's broilers are guaranteed a payment adequate to protect them against any loss in growing out the broilers under contract.

27

The integrated A. C. Smith Poultry Company complex makes all decisions with respect to both the production and marketing of its broilers.

28

Under A. C. Smith Poultry Company's grower contract, the grower provides housing and equipment for feeding and watering the chickens, electricity, water, litter for the chicken house, and heating fuel.

29

During the cold weather months from December 15 through May 15, growers raising broilers under contract to A. C. Smith Poultry Company are paid a fuel allowance of $12.00 per 1,000 birds placed in addition to the compensation otherwise provided by the contract.

30

In addition to providing a fuel allowance, A. C. Smith Poultry Company will finance a grower's fuel cost from flock to flock, and fuel for approximately 15 to 20% of my growers is billed directly to A. C. Smith Poultry Company for payment. No interest is charged to the growers for such fuel financing.

31

During the winter months when the fuel allowance is in effect, the minimum payment a grower under contract with A. C. Smith Poultry Company can receive is 2.31 cents per pound, and the maximum is 3.31 cents per pound. During the nonwinter months, when the fuel allowance is not in effect, the maximum grower payment is 3 cents per pound; the minimum payment is the guaranteed floor of 2 cents per pound.

32

Beyond the guaranteed minimum payment, compensation for growers under contract with A. C. Smith Poultry Company is calculated on a per pound basis from a scale which incorporates a factor for the grower's efficiency in converting feed to broiler meat and a second factor for the prevailing market price at the time the birds are marketed by A. C. Smith Poultry Company.

33

A. C. Smith Poultry Company produces broilers at a fairly constant level, with only two annual production adjustments. The processing plant operated by Mar-Jac, Inc. shuts down during the weeks of Thanksgiving and Christmas. No new flocks of broilers are placed during the two one-week periods at which time the birds would be placed in order to be ready for slaughter during Thanksgiving week and Christmas week. The placement with growers of flocks which would be placed during those weeks in the normal placement cycle are delayed one week in their placement.

34

Flocks are replaced with all growers in sequence, and each grower under contract with A. C. Smith Poultry Company settles (receives payment for) an average of 4½ flocks per year.

35

Except for the Christmas and Thanksgiving week placements, flocks are replaced within ten days to two weeks for all growers continuing under contract.

36

The number of growers under contract to A. C. Smith Poultry Company has remained fairly constant throughout each year, and from year to year. Most of our turnover is with inefficient growers who will try it for a year or two with us, and move to another company. These are growers who will not perform according to the requirements of the contract, and therefore don't handle the growout efficiently from the standpoint of costs to the integrated producer.

37

A grower who builds a broiler house in Forsyth County and does a competent job of performing under his contract should have no difficulty in getting chickens to raise for some integrator on a regular basis. There are at least seven integrated broiler production programs placing chickens in Forsyth County: A. C. Smith Poultry Company, Wilson & Co., Inc., Allied Mills, Inc., J & M, Helen Feed Store, Marell Poultry Company and Cagles, Inc.

38

I know of no grower who has had to close his chicken houses because of bankruptcy. All competent growers raising chickens for an integrated producer who has gone bankrupt or has otherwise gone out of business in Forsyth County have had no trouble getting on with other integrated programs.

39

There have been a substantial number of bankruptcies and withdrawals from the broiler business by integrated producers in Forsyth County.

40

In the 1940's and 1950's, there were 15 or 20 feed dealers located in Forsyth County who produced broilers through contract arrangements with growers. During the period 1959 through 1963, particularly in the latter part of that period, all but approximately 5 of those feed dealers went out of business.

41

After 1967, only 3 of the Forsyth County integrated producers remained in business, and one of those has recently withdrawn. There are presently only 2 integrated producers, A. C. Smith Poultry Company and Wilson & Co., Inc. still operating from locations in Forsyth County.

42

Despite the substantial number of bankruptcies and withdrawals from the broiler business by integrated producers, I don't know of any competent growers who have been out of chickens for any substantial length of time. At least 5 integrated producers located in other counties are currently placing chickens with Forsyth County growers.

43

Servicemen who are employees of A. C. Smith Poultry Company visit the contract growers at least once a week, to oversee the conditions and supervise the manner under which the chickens are being grown. The servicemen prescribe the proper temperature and ventilation of the broiler houses, and the grower is expected to notify the serviceman if a problem arises such as equipment failure or development of an abnormally high mortality rate.

44

The A. C. Smith Poultry Company growout agreement requires the grower to cooperate with his serviceman and to heat and care for the broilers according to the recommendations of the serviceman.

45

Employees of A. C. Smith Poultry Company place the day-old chicks in the growers' houses, and remove the chickens at the end of the growout. Unless hired and paid specifically for the purpose, A. C. Smith Poultry Company growers are not required or expected to assist in catching and cooping the chickens at the end of the growout.

46

Once the chicks are started—after 10 days or 2 weeks—the growers' efforts largely consist of being physically present in the houses several times a day to observe the chickens, to record and monitor mortality rates, and to make certain that the feeders, brooders (heaters), and ventilation and watering systems are in working order.

47

Contract broiler growing is a sideline with many growers, constituting a supplement to other farm, or off-farm, income. Broiler growing complements cattle raising very well, because it provides a steady income and the poultry manure and litter from the broiler houses provide a high quality fertilizer for grazing land.

48

Most broilers processed and marketed through Mar-Jac, Inc. are sold in fresh, ice or CO_2 packed form.

49

In commercial practice, ice-packed and chilled broilers must be sold to the ultimate consumer within seven days after they are slaughtered.

50

As a practical matter, in marketing fresh broilers Mar-Jac must find a buyer for all product no later than four days after slaughter.

51

Most demand for fresh broilers from distributors, wholesalers and consumers is for dressed broilers ranging in weight from approximately 2 to approximately 3½ pounds.

52

Birds in the field which are not slaughtered when they reach desirable market weight continue to consume feed, increasing the cost of production to the integrated producer.

53

In addition to the increased production costs for birds heavier than desirable weights, the heavy birds must be discounted from the prevailing market price for normal or desirable weight birds. Thus, as a practical matter, birds in the field cannot be withheld from slaughter more than one or two days after they reach marketing weight.

54

The integrated producer buys and places breeder flock chicks 12 to 18 months in advance of the date when the broilers produced from the eggs laid by the breeder flocks will be marketed.

55

Once breeder chicks are placed, adjustments in production can be made by the integrated producer only at the sacrifice of some or all of his expected return from the breeder flocks started, raised and placed for laying in the breeder houses.

56

Production adjustments after breeder chicks are placed require either (a) removing some breeder hens from production; (b) diverting broiler chick eggs from production prior to the hatchery stage; or (c) killing the broiler chicks after hatching but prior to placement for the growout.

57

A decision to cut back production using any of the methods described in the preceding paragraph requires the sacrifice of the integrated producer's investment in the laying flock and hatchery up to the point of decision and removal from production.

58

After the broiler chicks are placed for growout, 7 to 9 weeks prior to slaughter, no significant adjustment in production is possible. Thus, production decisions cannot be made on the basis of market facts and conditions available to the integrated producer any closer to the marketing date than the 7 or 8 weeks required for the growout.

59

The development of contract broiler production has been important to the rural population of north Georgia because of the limited agricultural alternatives. The north Georgia terrain prevented widespread mechanization of cotton picking, and cotton producers were unable to make money as labor costs increased.

60

Commercial broiler production on a large scale was initiated in the late 1930's by integrated feed dealers like Jesse Jewell and my father, who assumed the risk of marketing the broilers and providing the growers with a reasonable income on a regular basis.

61

Feed has always been the largest cost element in the production of live broiler chickens, and the integrated producer has always borne the risk of loss of that investment as well as the marketing risk.

62

Today, almost all integrated broiler production programs in north Georgia combine the hatchery and hatchery supply flock, the feed supply, the contract growing operation and the processing and marketing facilities into a single functional complex.

63

The major investor, and the principal risk-bearer, in broiler production is the integrated producer, who supplies between 85 and 95% of the total investment which goes into a unit of broiler meat production.

64

The contract grower is an important part of the integrated broiler production enterprise, but the decision-making function, the market risk and the major investment in broiler production is controlled almost exclusively by integrated producers like A. C. Smith Poultry Company.

Further deponent sayeth not, this 25th day of April, 1975.

/s/ A. C. SMITH

Sworn to and subscribed before me this 25 day of April, 1975.

MARY CASTLEBERRY
Notary Public,
State of Georgia
Forsyth County

My term expires 8-10-76.

In the United States District Court for the
Northern District of Georgia
Atlanta Division

(Title omitted in printing)

AFFIDAVIT OF THOMAS W. SPARKS

(Filed May 1, 1975)

State of Mississippi
County of Simpson

I, Thomas W. Sparks, after first being duly sworn, on oath depose and say:

1

I make this affidavit for use by National Broiler Marketing Association in support of its Motion for Summary Judgment made in this action.

2

I know of my own personal knowledge the facts stated in this affidavit.

3

My residence is Box 148, Magee, Mississippi.

4

I am Vice President of McCarty Poultry Farms, Inc. and also Vice President of McCarty Hatcheries, Inc. These two corporations are known and operated under the trade style McCarty Enterprises.

5

I am in charge of live bird production for McCarty Enterprises, and I have general responsibility for all phases of live bird production from the breeder stage through delivery of live birds to the processing plant.

6

McCarty Enterprises owns two starter farms, where breeder chicks are placed and raised by McCarty employees to an age of 8 weeks.

7

At the age of 8 weeks, the breeder pullets and cockerels are moved to 3 separate company-owned growing farms, where they are raised by McCarty employees to an age of 20 to 22 weeks.

of the hatchery, or by destroying chicks hatched from eggs set in the hatchery.

19

All of the alternatives for decreasing production once the production cycle begins constitute a loss of investment committed to the hen, egg or chick at the time it is taken out of production.

20

The number of eggs set in hatcheries at a given time generally determines the number of day-old chicks available for placement three weeks later, and thus the number of broilers which will be available for slaughter 10 to 12 weeks later.

21

The integrated producer's last opportunity to alter the number of broilers ready for slaughter in a given market week is the time at which day-old chicks are placed with growers, which occurs 7 to 9 weeks prior to the marketing date. Once chicks are placed with growers, they must be slaughtered and marketed when they arrive at market weight between 7 to 9 weeks later. Thus, significant adjustments in levels of production cannot be made without at least 7 to 9 weeks lead time.

22

Birds which are not slaughtered when they reach desirable market weight remain in the field consuming feed and increasing the production cost above normal, even though the heavier bird must normally be sold at a discount from the prevailing price for birds marketed at the desirable weight.

23

Almost all of McCarty's contract growers derive some income from other sources, either from cattle, hogs or other farming activities or from off-farm employment. Much of the day-to-day performance of the broiler growout contract is frequently carried on by the women, children or other relatives in the grower's family.

24

In addition to my employment as Vice President in charge of production for McCarty Enterprises, I also own and operate three broiler houses, with a total capacity of 45,000 birds per cycle, under a standard grower contract with McCarty Poultry Farms, Inc.

25

I built and equipped two of my houses in 1961, at a cost of $.60 per square foot, for a total of approximately $18,000 for the two of them. I built my third house in 1969 at a cost of approximately $.75 per square foot, for a total cost of approximately $11,250.00.

26

All labor in connection with the growing of broilers under contract in my growout operation is performed by an elderly hired couple for whom I furnish a dwelling house with all utilities paid and a $75.00 per week year-round salary.

27

My total farm consists of 52 acres, of which no more than 4 or 5 acres is involved in the broiler growout operation. I graze cattle on the remaining acreage.

28

My growout operation was not affected by the Dieldrin contamination. At the time the contamination was discovered, the chickens in my houses were only a week or so old. The Dieldrin contamination cutoff was three weeks of age, and birds less than three weeks of age at the time were not required to be destroyed.

29

The Dieldrin contamination resulted in destruction of approximately six weeks of McCarty Enterprises' production and affected approximately ⅔ of McCarty's growers.

30

All growers raising flocks required to be destroyed were paid the 6½ cent minimum payment for each bird placed with them, regardless of the age at which the contaminated birds were destroyed.

31

The resulting loss to McCarty Poultry Farms, Inc. was in excess of $1.5 million.

32

The 6½ cent per bird payment was adequate to cover the fixed costs, out-of-pocket expenses and most if not all labor invested in the flocks by the contract growers.

33

Integrated broiler production is the salvation of the small farm.

34

The broiler growing area of Mississippi is generally made up of small farms. It used to be a cotton and truck farming area; however, cotton production dried up, and truck farming went to the larger farms, because labor costs went up and the small farmer could not afford the equipment to mechanize.

35

Contract growing provides a regular income, and allows the farm family to stay on the farm rather than leaving in search of industrial or other off-farm employment.

36

In my personal poultry growout operation, I settled five flocks in 1973 for a total gross payment of $21,658.46. In 1974, I settled four batches for a total payment of $14,573.14.

37

I estimate the annual operating costs in connection with my contract broiler raising operation as follows:

Item	**Annual Cost**
Fuel (Butane gas)	$1,435.40
Electricity	305.31
Insurance	354.85
Taxes	13.42
House and equipment upkeep and maintenance	2,353.29
Labor	5,113.82

McCarty Poultry Farms, Inc. furnishes all litter used in the operation.

All expense for water is included in the electricity expense.

38

I am depreciating my broiler houses for tax and bookkeeping purposes over a 10-year period, and the equipment is being depreciated over a 10-year period, both on the straight line method. The equipment in my first two houses, built in 1961, depreciated out in 1971. Thus, my annual depreciation expense for 1973 was $3,362.89, and for 1974 it was $3,452.22.

/s/ THOMAS W. SPARKS

Sworn to and subscribed before me this 21st day of April, 1975.

DORIS TUELOS
Notary Public

My Commission Expires May 16th, 1978

In the United States District Court for the Northern District of Georgia, Atlanta Division

(Title omitted in printing)

State of Georgia
County of Glynn

AFFIDAVIT OF COLLIER WENDEROTH

(Filed June 23, 1975)

Comes now Collier Wenderoth, who, after first being duly sworn, on oath deposes and says the following:

1

I make this affidavit for use by National Broiler Marketing Association in support of its motion for summary judgment in the above-referenced action.

2

I am President of O.K. Feed Mills, Inc., Fort Smith, Arkansas, which is a member of National Broiler Marketing Association. O.K. Feed Mills along with O.K. Processors, Inc., an affiliated company under common family ownership, constitute an integrated broiler producing complex combining hatchery supply flocks, hatchery, feed mill, broiler grow out through contractual and company owned facilities, and broiler processing and marketing.

3

Under our contractual arrangement with our growers, our contract specifies that when baby chicks, feed, grit, medications and vaccines are delivered to the grower, they are also sold to the grower.

4

At the time we deliver the chicks, feed, vaccines, medications and sanitation products to the grower, however, there is no cash paid by the grower to O.K. Feed Mills and no money changes hands, at that time whatsoever. Instead the grower signs a note payable to O.K. Feed Mills, which O.K. Feed Mills, then discounts with recourse to a local bank or the local Production Credit Association where we have lines of credit. The sole purpose for the contractual provisions relating to the sale of chicks, feed, medication, etc. is this method of financing. The notes are paid and returned at the end of the grow out period. We have never called on a grower to pay the note and we have never paid a grower less than the amount of the note.

5

We feel we are morally obligated, although we are not contractually obligated, to pay a grower in the event of partial or complete loss of his flock due to disaster, such as flood, windstorm, or the like. For instance, if at the end of the fifth week of a seven week grow-out period one of our growers loses his flock as a result of windstorm, we pay him 5/7ths of the minimum payments he would have received had the birds grown the full seven weeks. We have always paid our growers in this fashion in this kind of situation.

6

Our contract provides that O.K. Feed Mills, and not the grower suffers the loss of investment in the chicks, feed, vaccines, medications and sanitation products which we have delivered to the grower in the event of such a disaster loss. Therefore in the event of a disaster we take all of the out of pocket loss.

/s/ COLLIER WENDEROTH

Sworn to and subscribed before me this 16th day of June, 1975.

ANNE C. NOEL
Notary Public, Georgia, State at Large

My Commission Expires Nov. 30, 1977

In the United States District Court for the
Northern District of Georgia
Atlanta Division

(Title omitted in printing)

AFFIDAVIT OF RONALD M. CAMERON

(Filed June 23, 1975)

State of Arkansas }
County of Pulaski }

Comes Now Ronald M. Cameron who having been duly sworn on oath deposes and says the following:

1

I am President of Mountaire Corporation, an integrated producer of broilers, located in Nashville, Arkansas, which is a member of National Broiler Marketing Association.

2

I make this Affidavit for use by National Broiler Marketing Association in support of its Motion for Summary Judgment in this action.

3

Under the broiler growing agreement which our company enters into with contract growers [M-46], we provide in part that:

> "it is agreed that Company and Grower shall have joint ownership of all poultry and both shall sign the PCA loan paper. Proceeds of the PCA loan shall be paid to the Company always and Company guarantees the timely repayment of all principal and interest of said loan. When the said PCA loan is repaid by the Company, then the poultry shall immediately become the sole property of the Company."

The reason for this contract arrangement is to facilitate loans from our local Production Credit Association. At the time we deliver baby chicks to the grower and deliver feed to the grower during the grow-out period, the grower makes no payment to Mountaire. At the end of the grow-out period the growers are not charged for the birds, feed, etc. Instead, Mountaire calculates comparative grower costs for all growers for the same grow-out period in order to determine what amount per pound of broilers the grower payment will be. Therefore, a grower is never required to pay Mountaire anything for a grow-out period and Mountaire always pays the grower at least the minimum amount per pound guaranteed by the contract.

4

Should a flock be destroyed by disaster, such as tornado, high wind, etc., the entire risk of loss of the chicks, medication and feed which we have delivered to the grower is borne by Mountaire and not by the grower.

5

I understand that the usual integrator contract provides that title to the chicks and feed remain in the integrator. As I said above, we use the contract provision quoted simply as a financing method. Except for financing, the quoted contract provision does not make our situation any different from the situation where the integrator retains full title to the chicks and feed, with respect to the economic or cash position, or risk of loss, as between any integrator and the grower.

/s/ RONALD M. CAMERON

Sworn to and subscribed before me this 18th day of June, 1975.

LINDA H. CHISENHALL
Notary Public

In the United States District Court for the
Northern District of Georgia
Atlanta Division

(Title omitted in printing)

OBJECTIONS

To the Admissibility of Affidavits Submitted by NBMA in Support of Its Motion for Partial Summary Judgment

(Dated June 6, 1975)

Rule 56(e), Federal Rules of Civil Procedure, requires that affidavits furnished in support of a motion for summary judgment "shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Plaintiff submits that certain of the affidavits or portions of affidavits relied on by NBMA do not meet this requirement of Rule 56(e), and objects to their admission in connection with NBMA's motion, as follows:

1. Affidavit of Leroy Emerson Mayfield

¶ 32, ¶ 34. The affidavit does not establish that affiant has personal knowledge of A. C. Smith's broiler operations, as opposed to his own growing operations.

2. Affidavit of James Archie Martin

¶ 23. The affidavit does not establish that affiant has personal knowledge of A. C. Smith's broiler operations.

3. Affidavit of J. Troy Copeland

¶ 22. The affidavit does not establish that affiant has personal knowledge of Fieldale's broiler operations.

4. **Affidavit of Maurice Layton**

¶ 23. The affidavit does not establish that affiant has personal knowledge of the financial conditions of other broiler growers.

5. **Affidavit of Ford Barrett**

¶ 19, ¶ 20, ¶ 21, ¶ 22. The affidavit does not establish that affiant has personal knowledge of A. C. Smith's broiler operations.

6. **Affidavit of Kirk H. Davis**

¶ 26. The affidavit does not establish that affiant has personal knowledge of the financial conditions of other broiler growers.

7. **Affidavit of William T. O'Neal**

¶ 32. The affidavit does not establish a basis that affiant has personal knowledge of Fieldale's broiler operations.

8. **Affidavit of Dr. Verner G. Hurt**

Dr. Hurt's affidavit does not set forth any facts establishing his expertise with respect to the broiler industry. The affiant has not, as far as the affidavit discloses, conducted specific studies or personally engaged in research involving the industry. Nor does the affidavit disclose experience in the operations of specific firms involved in the industry. Accordingly, we object to the admission of this affidavit in its entirety, on the ground that it establishes no foundation that would permit Dr. Hurt to testify either on the basis of personal knowledge or as an expert in the broiler industry.

9. **Affidavit of A. C. Smith**

¶ 26. The affidavit does not establish that affiant has personal knowledge of the costs incurred by every grower connected with his operations.

¶ 37, ¶ 38. The affidavit does not establish that affiant has personal knowledge of the degree of difficulty that growers may have in getting contracts with firms other than his own.

10. **Affidavit of Bob M. Anthony**

¶ 23, ¶ 24. Insofar as the affiant is saying that each member of NBMA is involved in every operation listed in ¶ 24, the affiant has not established a basis for showing his familiarity with the operations of each and every member of NBMA.

¶ 26. The affidavit does not establish that affiant has personal knowledge as a basis for testimony about the purposes of U.S.D.A. programs.

11. **Affidavit of H. F. McCarty, Jr.**

¶ 18. The affidavit does not establish that affiant has personal knowledge of the costs incurred by each of his growers.

¶ 27. The affidavit does not establish that affiant has personal knowledge of the incomes or standards of living realized by factory workers.

¶ 40. The affidavit does not establish that affiant has personal knowledge of the financial status or motivation of all broiler growers located in his area of Mississippi.

12. **Affidavit of Richard C. Larkin**

¶ 20. The affidavit does not establish that affiant has personal knowledge of the matter testified to.

¶ 32, ¶ 33. This testimony is objected to as hearsay. Statements contained in a book, obviously hearsay, do not become admissible because a witness says that he is in "general accord" with those statements.

Respectfully submitted this 6th day of June, 1975.

/s/ CHARLES S. STARK
/s/ LARRY R. PATTON
/s/ ELLIOT R. WARREN
Attorneys, United States
Department of Justice